

(19,664.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 199.

ANTONIO JOSE AMADEO, FOR THE USE OF AND  
TOGETHER WITH THE PASTOR MARQUEZ COM-  
PANY, IN LIQUIDATION, PLAINTIFFS IN ERROR,

*vs.*

THE NORTHERN ASSURANCE COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF PORTO RICO.

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1 At a regular term of the district court of the United States for the district of Porto Rico began and held at the city of Ponce in said district on the second Monday in January, being also the 11th day of that month in the year of our Lord nineteen hundred and four, and of the Independence of the United States of America the one hundred and twenty eighth.

Present: The Hon. Wm. H. Holt, judge.

Among the proceedings had were the following, to wit:

|                                 |   |
|---------------------------------|---|
| ANTONIO JOSÉ AMADEO             | } No. 141. Trespass on the<br>Case on Promises. |
| vs.                             |   |
| THE NORTHERN ASSURANCE COMPANY. |   |

Be it remembered that heretofore, to-wit: On the 21st day of April A. D. 1903, came the plaintiff by his attorney in this cause and filed in the clerk's office of the court aforesaid a declaration herein, which said declaration is as follows, to wit:

# Declaration.

United States District Court for Porto Rico.

|                                 |   |
|---------------------------------|---|
| ANTONIO JOSÉ AMADEO             | } |
| against                         |   |
| THE NORTHERN ASSURANCE COMPANY. |   |

Antonio José Amadeo, a citizen and resident of Porto Rico plaintiff by Charles M. Boerman his attorney, complains of the Northern Assurance Company a corporation organized by and under the laws and sovereignty of the United Kingdom of Great Britain and Ireland, defendant, of a plea of trespass on the case on promises:

For that whereas the defendant on or about the twenty first day December in the year 1884, made its policy of insurance and delivered the same to the plaintiff and thereby in consideration of a certain money premium, which has been paid by plaintiff to the defendant, did insured the plaintiff against loss and damage by fire to the amount of twelve hundred dollars pesos on a certain rancho under numero one, one thousand pesos, on another rancho numero

2 two, and nine hundred pesos on a cooperage building a total of three thousand and one hundred pesos. And that the defendant for the consideration aforesaid did by the said policy promise and agree to make good and satisfy unto the plaintiff his executors, administrators and assigns all such loss or damage not exceeding the said sum of three thousand one hundred pesos, as should happen by fire to the said property, whereon the said insurance was so

made as aforesaid from on or about the said twenty first day of December in the year 1884 until on or about the twenty first day of December of the year 1885 at noon, such loss or damage to be estimated according to true and actual value of said property at the time such loss or damage should happen and the amount thereof to be paid after notice and proof of such loss or damage should be made by the plaintiff in conformity with the conditions annexed to the said policy which are substantially as follows:

First. That all the circumstances of the risk to wit, situation and construction of buildings insured or in which effects are insured, the manner of their occupation if for residence or otherwise, the nature of the effects contained, and all calorific apparatus, must be specified, excepting chimneys and stoves and kitchen fires. In case of omission or concealment or incorrectness misleading the company appreciation and valuation of the risk the insurance will be null.

Second. In case of augmentation of the risk after the insurance by col-ocation of calorific or lighting apparatus or by introduction of dangerous operations business, effects or communications, or if another building dangerous be erected near or in case of insurance in other companies without consent of this company the insurance will remain without effect. In every case of the rise of the risk the company reserves the right to annul the policy returning the premium proportionate.

Third. For each separate building the quantity must be separately stated and also for the effects contained otherwise they will be not insured. Goods and house furniture must be separately insured.

3 Fourth. No insurance will be in effect till the premium or a deposit on account thereof is paid. Only receipts executed by this administration and signed by Gerent, secretary or other authorized employee will be recognized.

Fifth. The premium for renovation must be paid the same day and the policy will end at four in the afternoon.

Sixth. In the insurance are not included the following: Goods in deposit or commissioned, porcelain, crystals looking glasses, jewelry, watches, relics, metals, curious, manuscripts, engravings, pictures, designs scul-tures, musical, mathematical and philosophical instruments (if not especially mentioned) precious stones metals and moulds, writings and documents, bonds, notes, bills, money, bank-bills, stamps, account-books, powder and explosives, any damage arising through the natural heat or fermentation, or from invasion, foreign enemy, popular commotion or tumult from explosion except explosion from gas, from volcanic eruptions, earthquakes, hurricanes forest fires, or losses in buildings containing deposits of petroleum or coal-oil, canfin, benzin- naphtha or like liquids is not especially mentioned. Five gallons of coal-oil are allowed.

Seventh. The company is not responsible for more than forty dollars for each picture, engraving, design, jew-lry article, article of art, medal manuscript or other object, unless specified differently.



Eighth. A transfer of this policy without consent of the company indorsed thereon, if not by will or the effect of law, will avoid the policy.

Ninth. Right after a loss the insured must notify the company and after that, as soon as the circumstances will permit, must present a detailed (as reasonably as may be done) a statement of the different things lost or damaged with value at time of fire, presenting as comprobante (and if asked under oath) account books and other documents, explanation and proofs as reasonably may be asked. If the company should request, also proof that the loss did not originate from causes mentioned in art. six of these conditions.

4 And until all this be presented the company cannot be required to pay the loss. And if the property insured was partly damaged the insured cannot abandon it without consent of the company.

Ten. The value cannot exceed the cost of re-establishing, and in case of diminution of value by use or otherwise a deduction correspondingly shall be made.

Eleven. In case of allegations of fraud or false statements or willful causing of fire by insured or if no claim is made within three months or if after the claim has been refused no judicial proceeding is instituted three months thereafter, the insured in each of these cases loses the right of indemnization.

Twelve. In case of necessary removal of goods to save them from fire the company will contribute proportionately, but the company will not be responsible for losses thereby unless authorized by agent of company.

Thirteen. The company may reconstruct the building, but in case prevented by ordinances in force will not respond for more than the amount necessary for reparation in case no ordinance existed.

Fourteen. In case of loss the company may occupy the property damaged without any liability therefor.

Fifteen. In case of other insurance authorized by the company existing this company will only be liable proportionately.

Sixteen. In all cases where the policy is void all the premium paid will be forfeited.

Seventeenth. In case of disagreement as to the loss without the allegation of fraud the difference shall be submitted to arbitrators who may name a third one and their decision in writing shall be then obligatory. But in no case will the company take the risk of selling the property damaged. Experts may value to their worth before and after the fire and the company will pay the difference or the reparations.

Eighteen. If the property is worth more than the value insured then the insured loses pro rata. If the property is partly insured in another company then this — will be responsible only for the difference. If there be other insurance on a pro rata policy covering more property than the insured and there

was no other property but the insured herein lost, then this company responds for concurrently with the other.

Nineteen. The agents of this company shall not be responsible neither judicially nor extrajudicially by their persons or property of any claim made against the company. They will be responsible only as agents of the company, in whose name they sign the policy."

And the plaintiff avers that at the time of the making of the said policy and from thence until the happening of the loss and damage hereinafter mentioned he had an interest in the said property to the amount of the said sum so by the defendant insured thereon as aforesaid. And the plaintiff further avers that on the 7th day of February, 1885, the said property was consumed and destroyed by fire whereby the plaintiff then and there sustained loss and damage on the said property to the amount of the sum last aforesaid, which said loss and damage did not happen by means of any invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power or martial law, earthquake, hurricane, cyclone, spontaneous fermentation or heating, volcanic eruption, application of process by fireheat or explosion.

And the plaintiff further avers that forthwith after the happening of the said loss and damage he gave notice thereof to the defendant and as soon thereafter as possible delivered to the defendant as particular an account of the said loss and damage as the nature of the case would admit. And the plaintiff further avers that there was not at or since the time of making of said policy any other insurance on the said property except as mentioned in said policy and that the said building was not at or since that time appropriated, applied or used to and for the purpose of carrying on or exercising therein any trade business or vocation denominated hazardous or extra-hazardous or included in special rates.

Nevertheless although the plaintiff has kept and performed all things in said policy mentioned on his part to be performed and kept, the defendant has not yet paid to the plaintiff the said  
6 amount of the loss and damage aforesaid or any part thereof but refuses so to do to the damage of the plaintiff of ten thousand dollars and therefore he brings his suit.

C. M. BOAERMAN,  
Plaintiff's Attorney.

U. S. OF AMERICA, }  
District of Porto Rico, } ss :

José Antonio Amadeo being under oath says that the foregoing declaration is true to his knowledge in substance and fact.—

ANTONIO JOSÉ AMADEO.

Sworn and subscribed before me this 6th day of April, 1903.

A. AGUAYO, D. C.

The same day in the year last aforesaid the plaintiff by his attorney filed in the clerk's office of the court aforesaid a præcipe for a writ of summons in this case, which said præcipe is as follows, to-wit:

Præcipe for Summons.

United States District Court, District of Porto Rico.

ANTONIO JOSÉ AMADEO

vs.

NORTHERN ASSURANCE COMPANY. }

To the clerk of said court:

Please issue summons in above entitled case returnable to May term,

C. M. BOERMAN,  
Plaintiff's Attorney.

Thereupon there was issued out of the clerk's office of said court our certain writ of summons directed to the marshal of this district and against the defendant in this cause, which said summons is as follows, to wit:

In the District Court of the United States for Porto Rico, Sitting at San Juan.

ANTONIO JOSÉ AMADEO

vs.

THE NORTHERN ASSURANCE COMPANY. }

C. L. No. 141.

Summons.

UNITED STATES OF AMERICA, } ss:  
District of Porto Rico,

7 The President of the United States of America to the marshal of the district of Porto Rico, Greeting:

You are hereby commanded to summon the Northern Assurance Company if it can be found in your district to be and appear before the United States district court for the district of Porto Rico at the court rooms of said court in the city of Ponce on the 11th day of May, 1903, then and there to answer unto José Amadeo on an action on assumpsit, damages \$10,000 and have you then and there this writ. Failing to so appear judgment may be entered against the said defendant by default.

Witness: the honorable Wm. H. Holt, judge of the district court of the United States for Porto Rico, this 21st day of April, A. D. 1903 and of the Independence of the United States of America the 127.

Attest:

RICARDO NADAL, Clerk,  
By A. AGUAYO, Deputy.



Joinder on Demurrer.

United States District Court for Porto Rico.

J. A. AMADEO  
vs.  
NORTHERN ASSURANCE CO. }

And the plaintiff says that the said declaration and the matters therein contained in manner and form as the same are above set forth are sufficient in law for him to maintain his aforesaid action and he is ready to verify the same as the court shall direct: wherefore inasmuch as the defendant has not denied the said declaration the plaintiff prays judgment and his damages etc. to be adjudged to him etc.

C. M. BOERMAN,  
Plaintiff's Attorney.

Thereupon an entry was made upon the journal of said court in said cause, which said entry is as follows, to wit,

ANTONIO JOSÉ AMADEO  
vs.  
THE NORTHERN ASSURANCE CO. } C. L. No. 141.

9 Now comes the defendant herein and files a demurrer to the declaration and the same being heard is overruled and defendant thereupon files a plea.

And the plea filed by the defendant in this cause is as follows, to wit,

In the United States District Court for Porto Rico, Sitting at Ponce.

ANTONIO JOSÉ AMADEO  
vs.  
NORTHERN ASSURANCE COMPANY. } Common Law. No. 141.

Now comes the defendant above named, by its attorneys Dexter & Hord, and for its various plea to the declaration herein filed, says:

First. Defendant never promised and is not indebted to plaintiff in manner and form as in said declaration alleged, and of this it puts itself upon the country.

Second. For a second and further plea to the said declaration, defendant says that plaintiff ought not to have and recover herein for the reason that the alleged cause of action did not accrue within fifteen years before this suit, and of this it puts itself upon the country.

Third. For a third and further plea to the said declaration defendant says that plaintiff ought not to have and recover herein for the reason that plaintiff has no interest in the proceeds of the policy sued on, nor did he have at the time of the institution of this suit, the said policy and the proceeds thereof having been transferred, sold and assigned by him by notarial document May 2, 1885, to the firm of Pastor Marquez and Company, who are the only persons entitled to sue herein, and this defendants are ready to verify.

Fourth. For a fourth and further plea to said declaration defendant says that plaintiff ought not to recover herein for the reason that there has been no such damage or loss as set forth in the said declaration, and this defendant is ready to verify.

Fifth. For a fifth and further plea herein defendant says that plaintiff ought not to recover herein for the reason that after the said fire there was not presented to defendant as soon as circumstances would permit or within a reasonable time after said fire, a statement as specific as this defendant immediately demanded at the time of all the different objects, property and goods damaged or destroyed by the said fire, specifying the cash value of each article at the time of the fire, nor has there been presented to defendant, although demanded by it, of the holder at the time of said policy sued on, vouchers and proofs under oath as demanded by defendant; nor were there presented to defendant the books of account of plaintiff, nor various other documents, bill-, vouchers proofs, and explanations which defendant at that time demanded of plaintiff to show the amount of the loss thereof, or that the same was covered by the conditions of the said policy; and of this it puts itself upon the country.

Sixth. For a sixth and further plea to the declaration herein defendant says that plaintiff ought not to recover for the reason that immediately after the fire plaintiff made a claim in general terms for the full value of the said policy but without specifying the articles or giving in detail the information and proofs demanded of plaintiff by defendant as set forth in the fifth plea next above pleaded; but said claim was made for the full amount of said policy and was fraudulent in this, to wit: That the value of said property insured by the policy described in the declaration herein at the time of said insurance was not the sum specified in said policy, but that said value was much less than the amount contained in said policy, and that this insurance, sued on herein, was obtained by the false and fraudulent representations of plaintiff and without the knowledge of the defendant as to the real value of the said property so insured. And further the said claim for the total amount of the said policy so made as aforesaid was false and fraudulent for the reason that at the time of the said fire the property so described in said policy sued on herein was greatly less — the said sum so claimed as aforesaid by plaintiff; and this defendant is ready to verify.

Seventh. For seventh and further plea defendant says that plain-

11      tiff ought not to have and recover herein for the reason that the said fire as described in the declaration herein, and the destruction and loss of the property covered by the policy sued on herein was caused and occasioned by the procurement, means designs and voluntary act of the plaintiff, who caused the said property to be set fire for the fraudulent purpose of recovering from this defendant the amount of the said policy; and this defendant is ready to verify.

Eighth. For eighth and further plea to said declaration, defendant says the plaintiff ought not to recover herein for the reason that no sufficient and proper proofs of loss as required by the conditions of said policy of insurance, and as set forth in plea fifth herein above pleaded, was made or presented to defendant within three months after the said fire; and of this defendant puts itself upon the country.

Ninth. For ninth and further plea to the declaration herein defendant says that no suit was instituted to recover upon the said policy of insurance within three months after the said fire; and of this defendant puts itself upon the country.

Tenth. For tenth and further plea defendant says that plaintiff ought not to recover herein for the reason that on the — day of April 1885 defendant rejected the claims of plaintiff so made as aforesaid, and no suit was brought or judicial claim made against defendant within the term of three months from such rejection of said claim; and of this defendant puts itself upon the country.

DEXTER & HORD,  
Attorneys for Defendant.

Miguel Hernandez being duly sworn upon his oath says that he is agent of the above named defendant Northern Assurance Company, that he has read the foregoing plea, and that the same is true according to the best of his knowledge and belief.

M. HERNA-DEZ,  
For RAMON CORTADA & CO., Agents.

Sworn and subscribed before me this May 11th, 1903.

A. AGUAYO,  
D. C. U. S. Court.

And afterwards, to wit; on the 12th day of May in the year last aforesaid came the plaintiff by his attorney and filed in the clerk's office of said court a replication in this cause, which said replication is as follows, to wit;

12



## Replication.

United States District Court for Porto Rico.

ANTONIO JOSÉ AMADEO  
 against  
 THE NORTHERN ASSURANCE COMPANY. }

And the plaintiff says that as to the first plea of the defendant whereof he puts himself upon the country the plaintiff does the same.

2. As to the second and third pleas of the defendant above pleaded the plaintiff says that the same and the matters therein pleaded in manner and form are not sufficient in law to bar him from having his aforesaid action and that he is not bound by law to answer the same and this he is ready to verify.

3. As to the fourth plea the plaintiff avers that the loss and damage are, as stated in the declaration, and of this he puts himself upon the country.

4. As to the fifth plea the plaintiff says that all the notices proofs and other matters required by the conditions of the policy to be delivered within fifteen days were so delivered and this plaintiff prays may be inquired by the country.

5. As to the sixth plea plaintiff avers that the policy and the claim thereunder are and were made in good faith and conscience and denies that any fraud was intended or committed and this he prays may be inquired by the country.

6. As to the seventh plea plaintiff denies that the fire was of incendiary origin or that it was caused by his connivance or negligence, and this he prays may be inquired by the country.

7. And to the 8th plea plaintiff says that he did present every proof required by the condition of the policy within three months after the fire, and prays that this may be inquired by the country.

8. As to the ninth plea the plaintiff says that he could not commence suit within three months after the fire because the  
 13 then agent of the company has informed plaintiff that he no more represents the defendant and because the defendant was a foreign corporation and at the time at the end of three months had no representative agent in the island of Porto Rico. And the plaintiff also says that the defendant waived this clause of the policy, as the defendant offered him to pay a certain amount on the policy after the three months were over and all of this plaintiff prays may be inquired by the country.

9. And as to the tenth plea plaintiff says that he could not commence suit within three months after the rejection of the claim because the agent of the defendant informed him that the company had no more representative in the island of Porto Rico and because the company defendant is a foreign corporation and to the plaintiff's



knowledge and information did not have any representative at that time in the island of Porto Rico, and the plaintiff also says that the defendant for a long time has been dealing and in course of settlement with plaintiff and it has waived all the conditions alleged in that last said plea and of this plaintiff prays it may be inquired by the country.

C. M. BOERMAN,  
Plaintiff's Attorney.

U. S. OF AMERICA, }  
District of Porto Rico, } ss :

J. A. Amadeo on oath says that the foregoing replications are true in fact and substance.

ANTONIO J. AMADEO.

Sworn to before me this 12th May 1903—

RICARDO NADAL, Clerk,  
By A. AGUAYO, D. C.

And afterwards, to wit, on the thirteen days of May in the year last aforesaid came the defendant and filed in the clerk's office of the court aforesaid a motion to strike from the files certain parts of replications in this cause, which said motion is as follows to wit:

United States District Court for Porto Rico, Sitting at Ponce.

ANTONIO JOSÉ AMADEO }  
vs. } C. L. No. 141.  
NORTHERN ASSURANCE CO. }

14 Now comes defendant above named, by its attorneys Dexter & Hord, and moves the court to strike from the replication of the plaintiff herein the following paragraphs or parts of his replication filed herein to wit:

That paragraph which purports to be a replication to the fourth plea of the defendant—for the reason that it is argumentative, trivial and not good pleading.

Also that paragraph or part of said replication which purports to be a replication to the fifth plea of defendant—for the reason that the same is argumentative, trivial and not good pleading.

And as to the paragraphs or said replication which purport to be a replication to the sixth, seventh, eighth, ninth and tenth pleas of defendant—for the reason that the same are argumentative, trivial and not good pleading.

DEXTER & HORD,  
Attorneys for Defendants.

Thereupon an entry was made upon the journal of said court in said cause which said entry is as follows, to wit:

ANTONIO JOSE AMADEO, ETC., VS.

JOSÉ ANTONIO AMADEO  
 VS.  
 NORTHERN ASSURANCE COMPANY. } 141.

Now comes the defendant herein by its attorneys Dexter & Hord and files a motion to strike — parts of plaintiff's replication and the same being heard is submitted.

And afterwards to wit: on the 18th day of May in the year aforesaid, 1903 came the plaintiff by his attorney and filed in the clerk's office of the court aforesaid an amendment to the declaration in this cause, which said amendment is as follows to wit:

United States District Court for Porto Rico.

ANTONIO JOSÉ AMADEO  
 against  
 THE NORTHERN ASSURANCE COMPANY. }

The plaintiff by leave of court amends his complaint declaration as follows:

In the title of the case after the name of the plaintiff add  
 15 the following words: "for the use of and together with Pastor Marquez Company in liquidation.

In the body of the declaration add at the end of it the following paragraph:

And plaintiff avers that about the month of August 1885 the said policy was assigned to the Pastor Marquez Company which is a company in liquidation and of which Pedreo Salazar is liquidator."

C. M. BOERMAN,  
 Plaintiff's Attorney.

J. A. Amadeo on oath says that the foregoing amendment to the declaration is true.

ANTO. J. AMADEO.

Sworn to this 18th day May, 1903.

A. AGUAYO, D. C.

And on the 21st day of May in the year last aforesaid an entry was made upon the journal of said court in said cause, which said entry is as follows, to wit:

ANTONIO J. AMADEO  
 VS.  
 NORTHERN ASSURANCE COMPANY. }

Now comes the defendant herein by its attorneys Dexter & Hord and with permission of the court first had withdraws its motion to strike part of replication and by consent said replication is traversed upon the record.

And on the 22 day of May, 1903 came the parties herein by their respective attorneys and filed in the clerk's office of the court aforesaid a stipulation in this cause which said stipulation is as follows, to-wit:

ANTONIO J. AMADEO  
vs.  
NORTHERN ASSURANCE Co., } 141, 142, 143.  
ROYAL INSURANCE Co.,  
ROYAL INSURANCE Co. }

16 FREDERICO AMADEO  
vs.  
ROYAL INSURANCE Co., } 144, 145.  
ROYAL INSURANCE Co. }

It is hereby stipulated and agreed that in common law cases numbered 141, 142, 143, 144, 145, there shall be read in evidence the depositions of the witnesses taken in common law cases Nos. 112 and 113, in London and Liverpool, England, as they now appear of record in the said causes, reserving to the parties the right to make such objections thereto as they might have made at the time of the trial of the said causes Nos. 112 and 113.

Witness our hands this 22nd day of May, 1903.

C. M. BOERMAN,  
Attorney for Plaintiff.  
DEXTER AND HORD,  
Attorneys for Defendants.

This stipulation shall be considered as filed in each one of the said cases.

And afterwards, to wit: on the 12th day of January A. D. 1904 an entry was made upon the journal of said court in said case, which said entry is as follows, to wit:

ANTONIO J. AMADEO ETG ALL. }  
vs. } No. 141.  
NORTHERN ASSURANCE Co. }

The demurrer to the second plea herein is overruled to which plaintiff- excepts whereupon plaintiff- files a replication to the second plea to which the defendant files a demurrer.

And said replication to the 2nd plea filed by the plaintiff- in this cause is as follows, to wit;

## United States District Court for Porto Rico.

J. A. AMADEO ET AL. }  
 VS.  
 NORTHERN ASSURANCE Co. }

And as to the second plea of the defendant above pleaded the plaintiffs say that the same limitation and prescription therein pleaded was inter-upted extrajudicially and this plaintiffs pray may be inquired by the country.

Wherefore the plaintiffs pray judgment and their costs etc.

C. M. BOERMAN,  
 Attorney for Plaintiffs.

17 Ermelindo Salazar under oath says that the foregoing plea is replication is true in substance and fact.

E. SALAZAR.

Sworn to before me this 12th day of January 1904.

A. AGUAYO.

And the said demurrer to said replication to 2nd plea filed by the defendant in this cause is as follows, to wit :

## United States District Court for Porto Rico, Sitting at Ponce.

JOSÉ ANTONIO AMADEO ET AL. }  
 V.  
 NORTHERN ASSURANCE COMPANY. } No. 141.

Now comes defendant by its attorneys F. H. Dexter and Henry F. Hord and demurring to the replication to the second plea herein filed say- that the same is insufficient in law.

Wherefore etc.

NORTHERN ASSURANCE COMPANY,  
 By F. H. DEXTER &  
 HENRY F. HORD, Its Attorneys.

And afterwards to wit ; on the 13th day of January, 1904 an entry was made upon the journal of said court in said cause, which said entry is as follows, to wit :

ANTONIO JOSÉ AMADEO ET AL. }  
 VS.  
 NORTHERN ASSURANCE COMPANY. } No. 141.

The plaintiff- having filed on Jan. 12th 1904, an additional replication relative to the second plea of the defendant herein and the

defendants having heretofore filed a demurrer thereto it is now upon hearing sustained, plaintiff- excepts, and the plaintiff- declining to plead further it is adjudged that the defence set up in the second paragraph of the plea be and it is hereby sustained.

And it is therefore adjudged by the court that issue is found in favor of the defendant and that the plaintiffs recover nothing herein and that defendants go hence with judgement for cost against the plaintiffs; to all of which plaintiffs except.

Time is given to plaintiff- to March 15th to present a bill of exceptions and thereupon upon motion the amount of the appeal bond herein is fixed at five hundred dollars (\$500).

18 On the 14th day of March 1904, the plaintiffs filed their bill of exceptions which is as follows:

United States District Court for Porto Rico.

JOSÉ ANTONIO AMADEO ET AL.  
against  
THE NORTHERN ASSURANCE COMPANY. } C. L. No. 141.

Bill of Exceptions.

Be it remembered that at a term of the district court for Porto Rico, held in the city of Ponce, on the 12th day of January 1904, a cause therein pending wherein José Amadeo and The Pastor Marquez Company were plaintiffs and The Northern Assurance Company was defendant, came on to be heard before the Hon. Wm. H. Holt, judge of said court upon the demurrer of the plaintiffs to the second plea of the defendant to the declaration, and thereupon the court overruled the said demurrer, to which ruling of the court the plaintiff- excepted.

Thereupon the plaintiffs having filed a replication to said second plea of the defendant, the defendant demurred to said replication, and the court thereupon after hearing the argument of counsel sustained said demurrer, to which ruling the plaintiff- excepted.

This bill may not be necessary to the appeal,—in fact the court sustains but counsel desiring, it is approved and signed this March 14, 1904.

WM. H. HOLT, Judge.

And on the 20th of September 1904, the plaintiff- filed a petition for a writ of error and assignment of errors in this cause as follows, to wit:

## Petition for Writ of Error.

United States District Court for Porto Rico.

ANTONIO JOSÉ AMADEO ET AL. }  
 VS. }  
 NORTHERN ASSURANCE COMPANY. }

19 The plaintiff- in the above entitled cause feeling themselves aggrieved by the judgement entered on the 13th day of January 1904 come now by Charles M. Boerman their attorney and petition said court for an order allowing said plaintiffs to prosecute a writ of error to the United States Supreme Court under and according to the laws of the United States in that behalf made and provided.

And your petitioners will forever pray.

C. M. BOERMAN,  
 Attorney for Plaintiffs.

## Assignment of Errors.

United States District Court for Porto Rico.

ANTONIO JOSÉ AMADEO ET AL. }  
 VS. }  
 NORTHERN ASSURANCE COMPANY. }

Come now the plaintiffs and file the following assignment of errors upon which they will rely — their prosecution of the writ of error in the above entitled cause.

1. The overruling by the court of the demurrer of the plaintiffs to the second plea of defendant to the declaration.

2. Sustaining the demurrer of the defendants to the replication of the plaintiff- to the said second plea.

3. That the court erred in rendering judgement for the defendant and against the plaintiffs upon the pleadings in said cause and that said judgement is contrary to the law and the facts as stated in the pleadings in said cause.

Wherefore said plaintiffs and plaintiffs in error pray that the judgement of said court be reversed and such directions be given that full force and efficacy may issue to the plaintiffs by reason of said pleas.

C. M. BOERMAN,  
 Plaintiffs' Attorney.

And on the 21st. of September A. D. 1904, the court made the following order; to wit:

In the District Court of the United States for Porto Rico.

20

ANTONIO J. AMADEO ET AL. }  
 VS.  
 NORTHERN ASSURANCE COMPANY. }

Upon motion of C. M. Boerman, attorney for plaintiff, and upon filing a petition for a writ of error and an assignment of errors, it is ordered that a writ of error be and hereby is allowed to have reviewed in the Supreme Court of the United States, the judgement heretofore entered herein. This at San Juan, Porto Rico, this twenty-first day of September, A. D. 1904.

CHAS. F. McKENNA,  
 Judge of District Court for Porto Rico.

Appeal Bond. Filed December 20th, 1904.

United States District Court for Porto Rico.

ANTONIO JOSÉ AMADEO and PASTOR MARQUEZ and Co. }  
 VS.  
 NORTHERN ASSURANCE Co. }

Know all men by these presents that we, the Pastor Marquez and Co. as principal and Lucas Amadeo of Barros and Felix Salazar of Ponce as sureties are held and firmly bound unto The Northern Assurance Company the defendant above named in the sum of five hundred dollars to be paid to the said company successors and assignees, to which payment well and truly to be made we bind ourselves and each of us jointly and severally and our successors and assigns firmly by these presents. Sealed with our seals and dated this 30th day of November, 1904.

Whereas the above named plaintiffs have sued out a writ of error to the Supreme Court of the United States to reverse the judgement in the above entitled cause by the United States district court for Porto Rico.

Now therefore the condition of this obligation is such that if the above named plaintiffs shall prosecute said writ to effect and answer all costs and damages if they shall fail to make good their plea then this obligation to be void, otherwise to remain in full force and virtue.

(Sig'd)

PASTOR MARQUEZ & COM., en Liquid.  
 E. SALAZAR.  
 LUCAS AMADEO.  
 FELIPE SALAZAR.



21 Lucas Amadeo and Felipe Salazar each of them says under oath that he is worth two thousand five hundred — over and above his legal liabilities.

(Sig'd)

LUCAS AMADEO.  
FELIPE SALAZAR.

Sworn to before me this 30th November 1904.

A. AGUAYO,  
Deputy Clerk U. S. Court.

Lucas Amadeo and Felipe Salazar the persons who signed as sureties in the foregoing bond personally appeared before me the undersigned, and acknowledged the execution of the same. This 30th day of November, 1904.

H. H. SCOVILLE,  
Clerk U. S. District Court of Porto Rico,  
By A. AGUAYO,  
Deputy Clerk.

Petition and Order. Filed Dec. 30th, 1904.

In the District Court of the United States for Porto Rico.

|  |            |
|--|------------|
| ANTONIO JOSE AMADEO, for the Use of and Together<br>with The Pastor Marquez Company, in Liquidation, | } No. 141. |
| vs.  |            |
| NORTHERN ASSURANCE COMPANY.  |            |

### Petition.

Chas. M. Boerman, attorney for the plaintiffs and appellants in the above entitled cause, shows to this honorable court that because of the great distance of Porto Rico from Washington, thirty days is too short for the preparation and transmission of the record in this case, and therefore moves and prays this court to grant sixty days additional within which the said transcript of record may be transmitted to the Supreme Court of the United States.

C. M. BOERMAN,  
Attorney for Plaintiffs.

### Order.

The court hereby orders, upon the foregoing petition, that the time for filing the transcript of record be and hereby is extended to ninety days from the date of the issuance of the writ of error.

(Signed)

CHAS. F. McKENNA,  
Judge of the U. S. Dist. Court for Porto Rico.



22 In the District Court of the United States for Porto Rico.

I, H. H. Scoville, clerk of said court, do hereby certify, that the foregoing is a true and correct transcript of the record of the cause therein stated on file and of record in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Ponce, this 28th day of February, 1905.

[Seal United States District Court for the District of Porto Rico.]

H. H. SCOVILLE,  
Clerk U. S. District Court of Porto Rico,  
By A. AGUAYO,  
Deputy Clerk.

23 [Endorsed:] No. 141 In the district court of the United States for Porto Rico. Antonio José Amadeo vs. Northern Assurance Company Transcript of record.

24 In the District Court of the United States for Porto Rico.

|  |            |
|--|------------|
| ANTONIO JOSÉ AMADEO, for the Use of and Together with<br>The Pastor Marquez Company, in Liquidation, | } No. 141. |
| vs.  |            |
| NORTHERN ASSURANCE COMPANY.  |            |

Citation.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Northern Assurance Company and F. H. Dexter, Esq., its attorney, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, District of Columbia, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the district court of the United States for Porto Rico, wherein Antonio José Amadeo for the use of and together with The Pastor Marquez Company in liquidation are plaintiffs and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 31st day of December, A. D. 1904, and of the Independence of the United States the one hundred and twenty-ninth.

[Seal United States District Court for the District of Porto Rico.]

CHAS. F. McKENNA,  
Judge of the District Court of the  
United States for Porto Rico.

## Return on Service Writ.

UNITED STATES OF AMERICA, } ss:  
 The District of Porto Rico, }

I hereby certify and return that I served the annexed citation on the therein-named Northern Assurance Company by handing to and leaving a true and correct copy thereof with F. H. Dexter, its attorney personally at San Juan in said district on the 5th day of January, A. D. 1905.

E. S. WILSON,  
 U. S. Marshal.  
 — — —, Deputy.

25½ [Endorsed:] No. 141. In the district court of the United States for Porto Rico. Antonio José Amadeo for the use of and together with The Pastor Marquez Company in liquidation vs. Northern Assurance Company. Citation. Marshal's fees. 1 service, \$2.00 Expenses — D.

26 In the District Court of the United States for Porto Rico.

ANTONIO JOSÉ AMADEO, for the Use of and Together with  
 The Pastor Marquez Company, in Liquidation,  
 vs.  
 NORTHERN ASSURANCE COMPANY. } No. 141.

## Writ of Error.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable Chas. F. McKenna, judge of the district court of the United States for Porto Rico, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court of the United States for Porto Rico, before you, between Antonio José Amadeo for the use of and together with The Pastor Marquez Company in liquidation, plaintiffs in error, and The Northern Assurance Company, defendant in error, a manifest error has happened to the great damage of the said Antonio José Amadeo for the use of and together with The Pastor Marquez Company in liquidation, plaintiffs in error, as by the complaint appears.

We, being willing that error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in

this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so as to have the same at the city of Washington, District of Columbia, on the 30th day of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 31st day of December, in the year of our Lord one thousand nine hundred and four.

H. H. SCOVILLE,  
Clerk of the U. S. Dist. Court for Porto Rico.

Allowed by

[Seal United States District Court for the District of Porto Rico.]

CHAS. F. McKENNA,  
Judge of the District Court of the  
United States for Porto Rico.

28 [Endorsed:] No. 141. In the district court of the United States for Porto Rico. Antonio José Amadeo for the use of and together with The Pastor Marquez Company in liquidation vs. The Northern Assurance Co. Writ of error.

Endorsed on cover: File No. 19,664. Porto Rico D. C. U. S. Term No. 199. Antonio Jose Amadeo, for the use of and together with The Pastor Marquez Company, in liquidation, plaintiffs in error, vs. The Northern Assurance Company. Filed March 15th, 1905. File No. 19,664.

(19,665.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 200.

ANTONIO JOSE AMADEO FOR THE USE OF AND TO-  
GETHER WITH THE PASTOR MARQUEZ COMPANY, IN  
LIQUIDATION, PLAINTIFFS IN ERROR,

*vs.*

THE ROYAL INSURANCE COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF PORTO RICO.

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1 At a regular term of the district court of the United States within and for the district of Porto Rico began and held at the city of Ponce in said district on the second Monday in January being also the eleventh day of that month in the year of our Lord nineteen hundred and four and of the Independence of the United States of America the one hundred and twenty eighth.

Present: The Hon. Wm. H. Holt, judge.

Among the proceedings had were the following, to wit:

|                            |   |                               |
|----------------------------|---|-------------------------------|
| ANTONIO JOSÉ AMADEO ET AL. | } | Assumpsit. Dges., \$9,000.00. |
| vs.                        |   | C. L. No. 142. Consol-        |
| ROYAL INSURANCE COMPANY    |   | dated.                        |

and

|                            |   |                                |
|----------------------------|---|--------------------------------|
| JOSÉ ANTONIO AMADEO ET AL. | } | Assumpsit. Dges., \$15,000.00. |
| vs.                        |   | C. L. No. 143. Consol-         |
| ROYAL INSURANCE COMPANY.   |   | dated.                         |

Be it remembered that heretofore, to-wit: on the 21st day of April A. D. 1903, came the plaintiff by his attorney and filed in the clerk's office of this court his declarations in these causes and also his præcipe for writ of summons in same, which declarations and præcipi are as follows, to wit:

### Declarations.

United States District Court for Porto Rico.

|                                       |   |
|---------------------------------------|---|
| ANTONIO JOSÉ AMADEO                   | } |
| against                               |   |
| THE ROYAL INSURANCE CO. OF LIVERPOOL. |   |

Antonio José Amadeo a citizen and resident of Porto Rico plaintiffs by his attorney Charles M. Boerman, complains of the Royal Insurance Company of Liverpool a corporation organized under the laws and sovereignty of the United Kingdom of Great Britain and Ireland, defendant of a plea of trespass on the case on promises:

2 For that whereas the defendant on or about the 21st day of December, 1884, made its policy of insurance and delivered the same to plaintiff and thereby then and there for a consideration of a certain money premium to it paid by the plaintiff did insure plaintiff against loss or damage by fire to the amount of twelve hundred dollars on a building covered with tejamaní used for cooperage articles, eight hundred dollars on material and effects of cooper-

age therein stored and five hundred dollars on a building covered with galvanized iron, total 2500.00 dol-ars.

And the defendant for the consideration aforesaid did by the said policy promise and agree to make good and satisfy unto the plaintiff, his executors, administrators and assigns, all such loss and damage not exceeding the said sum of three thousand one hundred pesos, as should happen by fire to the said property whereon the said insurance was so made as aforesaid from on or about the said 21st day of December in the year 1884, until or about the 21st day of December of the year 1885 at noon, such loss or damage to be estimated according to true and actual value of said property at the time such loss or damage should happen and the amount thereof to be paid after notice and proof of such loss and damage should be made by the plaintiff in conformity with the conditions annexed to the said policy, which follows:

The conditions referred to in this policy are as follows:

No. 1. Any material misdescription of any of the property proposed to be hereby insured or of any building or place in which property to be so insured is contained or any omission to state the existence of any hazardous trade, or of any apparatus in or by which heat is produced other than grates in common fire places herein and and any misstatement of or omission to state any fact material to be known for estimating the risk whether at the time of effecting the insurance or afterwards renders this policy void as to the property affected by such misdescription, misstatement or omission respectively.

2. If after the risk has been undertaken by the company anything whereby the risk is increased be done to in or upon property hereby insured or to upon or in any building or place in which property hereby insured is contained, or if any property hereby insured is removed from the building or place in which it is herein described as being contained or if any addition to the risk arise from any other cause whatsoever without in each and every such cases the assent or sanction of the company signified by indorsement thereon or if the insured shall refuse or neglect to pay any other premium which may be demanded in consequence of any increase of risk the insurance as to the property thereby affected, ceases immediately thereupon to attach, and if by reason of such alteration or addition or from any cause whatever the company or its agents shall desire to terminate the insurance affected by this policy it shall be lawful for the company or its agents so to do by notice to the insured or his representatives and to require this policy to be given up for the purpose of being cancelled provided that in any such case the company shall refund to the insured a rateable proportion for the unexpired time hereof for the premium received for the insurance.

3rd. This policy does not cover property held in trust or on commission, unless expressly described as such, nor china glass, looking glasses, jewels, glass, clocks, watches, trinkets, medals, curiosities,



manuscripts, prints, paintings, drawings, sculptures, musical mathematical and philosophical instruments, patterns, models, and moulds unless specially mentioned in the policy, nor deeds, bonds, bills of exchange promissory notes, money, security for money, stamps, and books of account nor gun-powder, nor loss or damage by fire happening during the existence of any invasion foreign enemy rebellion, insurrection, riots, civil commotion, military or usurped power or martial law within the country or locality in which the property insured is situated unless proof be made to the satisfaction of the directors that such a loss or damage was not occasioned by or connected with but occurred from a cause or causes independent from the existence of such invasion foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power, or martial

4 law, and this policy does not cover loss or damage occasioned by or through any earthquake, or hurricane, or by or through the spontaneous fermentation or heating of the subject insured, nor goods destroyed or damaged while undergoing the process by which the application of fire heat is necessary nor loss or damage by explosion except loss or damage to a building or property contained therein, caused by explosion of gas if such building, not being a building in which gas is manufactured.

4th. No insurance proposed to the company is to be considered in force until the premium be actually paid, no receipts for any premium of insurance shall be valid or available for any purpose whatsoever except as are issued and printed from the company's office and signed by one of the clerks or agents of the office and impressed with the seal of the company, and any condition or proviso contained indorsed upon, or referred to in any such receipt shall be taken as part of this policy.

5th. This policy ceases to be in force as to any property hereby insured which shall pass from the insured to any other person otherwise than by will or operation of law unless notice thereof be given to the company and the subsistence of the insurance in favor of such other person being declared by memorandum indorsed there, or by or on behalf of the company.

6th. On the happening of any loss or damage by fire to any of the property hereby insured, the insured must forthwith give notice in writing thereof to the company and within fifteen days at latest deliver to the company as particular an account as may be reasonable or practicable of the several articles or matters damaged or destroyed by fire and also of all other articles and matters insured by this company's policy, with the estimated value of each of them respectively having regard to their several values at the time of the fire and also of the nature and amount of the loss or damage occasioned to each or any such articles or matters, and of the interest of the insured therein, and in support thereof give all such vouchers proofs and explanations and other evidence as may be reasonable required by or in behalf of the company together with, if  
5 required, a statutory declaration of the truth of the account, and in default thereof no claim in respect of such loss or



damage shall be payable or sustainable unless and until such notice, account proof and explanation or evidence respectively shall have been given or produced as aforesaid, and such statutory declaration if required, shall have been made.

7th. No profit nor advantage of any kind is to be included in any claim for loss or damage under this policy and if the claim be in any respect fraudulent, or if any false statutory declaration be made or used in support thereof, or if the fire be occasioned by or through the procurement or with the knowledge or connivance of the insured, all benefit under this policy is forfeited.

8th. In case of damage by removal of property to escape conflagration this company will contribute thereto in the proportion the sum insured hereby shall bear to the whole value of such property before removal, but the company shall not be held liable for property stolen.

9th. The company if they think fit, at their option reinstate or replace the property damaged or destroyed instead of paying the amount of the loss or damage and may join with any other company or insurers in so doing in cases where the property is also insured elsewhere.

10th. On the happening of any damage by fire to any building or place or property or effects within any building or place in respect of which a claim is or may be made under this policy the company without being deemed wrongdoers, may by their authorized officers and servants or others enter into and for a reasonable time remain in possession of such building or place property or effects for all reasonable purpose relating to or in connection with the insurance thereby affected and this policy shall be evidence of leave and license and authority for that purpose.

11th. The insured must give notice to the company of any insurance or insurances made elsewhere the property hereby insured or any part thereof the particulars of which must be indorsed on the policy and unless such notice be given and indorsement be made the insured will not be entitled to any benefit under this policy.

12th. If at the time of any loss or damage by fire happening to any property hereby insured there be any subsisting insurance or insurances, whether effected by the insured or by any other person covering the same property this company shall not be liable to pay or contribute in respect of such loss or damage more than its rateable proportion of such loss or damage.

13th. In all cases where any other subsisting insurance or insurances whether effected by the insured or by any other person on any property hereby insured either exclusively or together with any other property in and subject to the same risk only shall be subject to average, the insurance on such property under this policy shall be subject to average in like manner.

14th. If any difference shall at any time arise between the company and the insured or any claimant under this policy as to the

amount of any loss or damage by fire and no fraud be alleged, every such difference as and when the same arises shall be referred to the arbitration and decision of two in different persons one to be chosen by the party claiming and the other by the company, or in case of disagreement between them then of an umpire to be chosen by the arbitrators before entering on the reference provided that if one of the parties fail to name an arbitrator within ninety days after being called upon by the other party to do so subsequently to furnishing of the proofs and evidence and other matters as stipulated by the foregoing condition No. 6, then in such case shall the other party be at liberty to choose both arbitrators who shall agree upon an umpire before entering upon the evidence reference, and the cost of the reference shall be in the discretion of the arbitrators or umpire as the case may be who shall award by whom and in what manner the same shall be paid, and the decision of the arbitrators or umpire as the case may be shall be final and binding on all parties and this conditions shall be deemed and taken to be an agreement to refer as aforesaid, and it is hereby expressly stipulated and declared that the obtaining of an award by such arbitrators or umpire as the case may be shall be a condition precedent to the liability or obligation of the company to pay or satisfy any claim under this policy for loss or damage in respect of which any such difference may have arisen and to the enforcement of any such claim.

15th. In all cases where this policy is void or ceases to be in force under any of the foregoing conditions all moneys paid to the company in respect thereof will be forfeited.

16th. The directors of the company shall not be sued nor made personally responsible for this insurance until the funds of the company are first exhausted and the agents shall in no case be responsible either on account of any legal or any other investigation which they might find it necessary to institute for the satisfaction of the company nor can their personal property be attached on account of any alleged loss by the insured.

17th. If in any case the company shall be unable to reinstate or repair the buildings because of any provisions in the acts in force for regulating the alignment of streets or directions of buildings the company shall in every such case only be liable to pay such sum as would be requisite to reinstate or repair such buildings if the same could lawfully be reinstated to their former condition.

18th. It is hereby declared and agreed that if the property covered by this policy shall at the breaking out of any fire be collectively of greater value than the sum insured thereon, then this company shall pay or make good such a proportion only of the loss or damage as the sum so insured shall bear to the whole value of the said property at the time when such fire shall happen—

And the plaintiff avers that at the time of the making of the said policy and from thence until the happening of the loss and damage hereinafter mentioned he had an interest on the said prop-

erty to the amount of the said sum so by the defendant insured thereon as aforesaid.

And the plaintiff further avers that on the 7th day of February 1885, the said property was consumed and destroyed by fire whereby the plaintiff then and there sustained loss and damage on the said property to the amount of the sum last aforesaid, which said loss and damage did not happen by means of any invasion foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power, or martial law, earthquake, hurricane, cyclon- spontaneous fermentation or heating, volcanic eruption, application of process by fire heat, or explosion.

And the plaintiff further avers that forthwith after the happening of the said loss and damage he gave notice thereof to the defendant and as soon thereafter as possible delivered to the defendant as particular an account of the loss and damage as the nature of the case would admit.

And the plaintiff further avers that there was not at or since the time of making the said policy any other insurance on the said property except as in said policy mentioned and that the said building was not at or since that time appropriated, applied or used to and for the purpose of carrying on or exercising therein any trade business or vacation denominated hazardous or extra-hazardous or included in special rates.

Nevertheless although the plaintiff has kept and performed all things in said policy mentioned on his part to be performed and kept, the defendant has not yet paid to the plaintiff the said amount of the loss and damage aforesaid or any part thereof but refuses so to do to the damage of the plaintiff of nine thousand dollars and therefore he brings his suit.

C. M. BOERMAN,  
Plaintiff's Att'y.

U. S. OF AMERICA, }  
District of Porto Rico, } ss:

José Antonio Amadeo being under oath says: that the foregoing declaration is true to his knowledge in substance and fact.

ANTONIO JOSÉ AMADEO.

Sworn to before me this 6th day of April 1903.

A. AGUAYO,  
Deputy Clerk.

9 In the United States District Court for the District of Porto Rico.

JOSÉ ANTONIO AMADEO

against

THE ROYAL INSURANCE COMPANY OF LIVERPOOL. }

José Antonio Amadeo, a citizen and resident of Porto Rico, plaintiff by his attorney Charles M. Boerman, complains of the Royal Insurance Company of Liverpool a corporation organized under and by the laws of the United Kingdom of Great Britain and Ireland, defendant, of a plea of trespass on the case on promises: For that whereas the defendant on the 15th of September 1884, made its policy of insurance and delivered the same to the plaintiff and for the consideration therein expressed, to it paid by the plaintiff, promised the plaintiff in the terms of the said policy and the conditions thereto annexed, which said policy and conditions here follow in these words and figures to wit:

This policy of insurance witnesseth that Doctor Antonio J. Amadeo, estate owner of Quebrada Arenas, Maunabo, P. R. hereinafter called the insured, having paid to the undersigned as authorized agents of the Royal Insurance Company, hereinafter called the company the sum of \$43.75 cur. money for insuring against loss or damage by fire as hereinafter mentioned, the property hereinafter described in the sum or several sums, following to wit:

\$3500.00 currency on the rum distilling machinery and apparatus contained in the rum distillery of the sugar estate "Quebrada Arenas" property of the insured, @ 1½%—the building serving the purposes of such distillery, is constructed of wood and roofed partly, with zinc and partly with tiles, and is insured in the northern office for £1000, whilst the remainder of the works and buildings on said estate are insured with the just mentioned Co. for £4000, more and with this company \$2500, under policy No. 2647834.

The company hereby agree with the insured (but subject to the conditions on the back thereof which are to be taken as part of this policy) that if the property above described or any part thereof shall be destroyed or damaged by fire at any time between the 15th day of September 1884 and four o'clock in the afternoon of the 15th day of September 1885, the company will out of their capital stock and funds make good or pay to the insured the value of the property so destroyed or the amount of such damage thereto to the amount not exceeding in respect of each or any of the several matters above specified the sum set opposite thereto respectively, and not exceeding in the whole \$3500.00 dollars and also not exceeding in any case the amount of the insurable interest therein of the insured at the time of the happening of such fire. In witness whereof we, two of the directors of the said company by their authorized agents have hereunto set out hands and have caused the

common seal of said company to be hereunto affixed dated at Porto Rico, this 15th day of September in the year of our Lord 1884, and issued there.

R. BROCKBANK,  
A. W. RAYNER, Directors,  
By their attorneys FEDRSEN WILLINK & CO.,  
Agents of the Company.

The conditions referred to in this policy are as follows:

1. Any material misdescription of any of the property proposed to be hereby insured or of any building or place in which property to be so insured is contained or any omission to state the existence of any hazardous trade or of any apparatus in or by which heat is produced other than grates in common fire places therein and any misstatement of or the omission to state any fact material to be known for estimating the risk whether at the time of effecting the insurance or afterwards, renders this policy void as to the property affected by such misdescription, misstatement or omission respectively.

2. If after the risk have been undertaken by the company any thing whereby the risk is increased be done to in or upon property hereby insured or to upon or in any building or place in which property hereby insured is contained, or if any property hereby insured is removed from the building or place in which it is herein described as being contained or if any addition to the risk arise from any other cause whatsoever without in each and every of such cases the assent or sanction of the company signified by indorsement thereon or if the insured shall refuse or neglect to pay any further premium which may be demanded in consequence of any increase of risk, the insurance as to the property thereby affected ceased immediately thereupon to attach, and if by reason of such alteration or add-tion or from any cause whatever the company

11 or its agents shall desire to terminate the insurance effected by this policy it shall be lawful for the company or its agents so to do by notice to the insured or his representatives and to require this policy to be given up for the purpose of being cancelled, provided that in any such case the company shall refund to the insured a ratable proportion for the unexpired time thereof for the premium received for the insurance.

3rd. This policy does not cover property held in trust or on commission unless expressly described as such, nor china glass, looking glasses, jewels, glass, clocks, watches, trinkets, medals, curiosities, manuscripts, prints, paintings, drawings, sculptures, musical, mathematical and philosophical instruments, patterns, models and moulds, unless specially mentioned in the policy, nor deeds, bonds, bills of exchange, promissory notes, money security for money stamps, and books of account, nor gun-powder, nor loss or damage by fire happening during the existence of any invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power

or martial law, within the country or locality in which the property insured is situated unless proof be made to the satisfaction of the directors that such loss or damage was not occasioned by or connected with but occurred from a cause or causes independent of the existence of such invasion, foreign enemy, rebellion, insurrection, riot, civil commotion military or usurped power or martial law. And this policy does not cover loss or damage occasioned by or through any earthquake or hurricane or by or through the spontaneous fermentation or heating of the subject insured, nor goods destroyed or damaged while undergoing any process by which the application of fire-heat is necessary, nor loss or damage by explosion except loss or damage to a building or property contained therein by explosion of gas in such building not being a building in which gas is manufactured.

4th. No insurance proposed to the company is to be considered in force until the premium be actually paid. Nor receipts for any premiums of insurance shall be valid or available for any purpose whatever except as are printed and issued from the company's office and signed by one of the clerks or agents of the office and  
12 impressed with the seal of the company, and any condition or proviso so contained in endorsed upon or referred to in any such receipt shall be taken as part of this policy.

5. This policy ceases to be in force as to any property hereby insured which shall pass from the insured to any other person otherwise than by will or operation of law unless notice thereof be given to the company and the subsistence of the insurance in favor of such other person be declared by a memorandum endorsed thereon by or on behalf of the company.

6. On the happening of any loss or damage by fire to any of the property hereby insured the insured must forthwith give notice in writing thereof to the company and within fifteen days at latest deliver to the company as particular an account as may be reasonable practicable of the several articles and matters damaged or destroyed by fire and also of all other articles and matters insured by this company policy with the estimated value of each of them respectively having regard to their several values at the time of the fire, and also of the nature and amount of the loss and damage occasioned to each or any of such article or matter, and of the interest of the insured therein, and in support thereof give all such vouchers proofs and explanations and other evidence as may be reasonably required by or in behalf of the company together with if required a statutory declaration of the truth of the account, and in default thereof no claim in respect of such loss or damage shall be payable or sustainable unless and until such notice account, proof and explanation or evidence respectively shall have been given or produced as aforesaid, and such statutory declaration if required shall have been made.

7. No profit nor advantage of any kind is to be included in any



claim for loss or damage under this policy and if the claim be in any respect fraudulent or if any false statutory declaration be made or used in support thereof, or if the fire be occasioned by or through the procurement or with the knowledge or connivance of the insured, all benefit under this policy is forfeited.

8th. In case of damage by the removal of property to escape conflagration this company will contribute thereto in the proportion the sum insured hereby shall bear to the whole value of such property before removal, but the company shall not be held liable for property stolen.

9th. The company may if they think fit at their option reinstate or replace the property damaged or destroyed instead of paying the amount of the loss or damage and may join with any other company or insurers in so doing in cases where the property is also insured elsewhere.

10th. On the happening of any damage by fire to any building or place or property or effects within any building or place in respect of which a claim is or may be made, under this policy the company without being deemed wrong doers may by their authorized officers and servants or others enter into and for a reasonable time remain in possession of said building or place or property of effects for all reasonable purposes relating to or in connection with the insurance hereby effected and this policy shall be evidence of leave and licence and authority for that purpose.

11th. The insured must give notice to the company of any insurance or insurances made elsewhere of the property hereby insured or any part thereof the particulars of which must be endorsed on the policy and unless such notice be given and endorsement be made the insured will not be entitled to any benefit under this policy.

12th. If at the time of any loss or damage by fire happening to any property hereby insured there be any other subsisting insurance or insurances whether effected by the insured or by any other person covering the same property, this company shall not be liable to pay or contribute in respect of such loss or damage more than its rateable proportion of such loss or damage.

13th. In all cases where any other subsisting insurance or insurances whether effected by the insured or by any other person on any property hereby insured either exclusively or together with any other property in and subject to the same risk only shall be subject to average, the insurance of such property under this policy shall be subject to average in like manner.

14th. If any difference shall at any time arise between the company and the insured or any claimant under this policy as to the amount of any loss or damage by fire and no fraud be alleged, every such difference as and when the same arises shall be referred to the arbitration and decision of two indifferent persons one to be chosen by the party claiming and the other by the company, or in case of disagreement between them of an umpire to be chosen by the arbi-

trators before entering on the reference provided that if one of the parties fail to name an arbitrator within ninety days after being called upon by the other party to do so subsequently to furnishing of the proofs and evidence and other matters as stipulated by the foregoing condition No. 6—then in such case shall the other party be at liberty to choose both arbitrators who shall agree upon an umpire before entering upon the evidence reference—and the costs of the reference shall be in the discretion of the arbitrators or umpire as the case may be who shall award by whom and in what manner the same shall be paid, and the decision of the arbitrators or umpire as the case may be shall be final and binding to all parties and this condition shall be deemed and taken to be an agreement to refer as aforesaid. And it is hereby expressly stipulated and declared that the obtaining of an award by such arbitrators or umpire as the case may be shall be a condition precedent of the liability or obligation of the company to pay or satisfy any claim under this policy for loss or damage in respect which any such difference may have arisen and to the enforcement of any such claim.

15th. In all cases where this policy is void or ceases to be in force under any of the foregoing conditions all moneys paid to the company in respect thereof will be forfeited.

16th. The directors of the company shall not be sued nor made personally responsible for this insurance until the funds of the company are first exhausted, and the agents shall in no case be  
15 responsible either of account of any legal or any other investigation which they may find it necessary to institute for the satisfaction of the company, nor can their personal property be attached on account of any alleged loss by the insured.

17th. If in any case the company shall be unable to reinstate or repair the buildings because of any provisions in the acts in force for regulating the alignment of streets or the erection of buildings the company shall in every such case only be liable to pay such sum as would be requisite to reinstate or repair such buildings if the same could lawfully be reinstated to their former condition.

18th. It is hereby declared and agreed that if the property covered by this policy shall at the breaking out of any fire be collectively of greater value than the sum insured thereon then this company shall pay or make good such a proportion only of the loss or damage as the sum so insured shall bear to the whole value of the said property at the time when such fire shall happen. \* \* \*

And the plaintiff avers that at the time of the making of the said policy and from thence until the happening of the loss and damage hereinafter mentioned he had an interest on the said property to the amount of the said sum so by the defendant insured thereon as aforesaid.

And the plaintiff further avers that on the 7th of February 1885, the said property was consumed and destroyed by fire, whereby the plaintiff then and there sustained loss and damage on the said property to the amount of the sum last aforesaid, which said loss



and damage did not happen by means of any invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power or martial law, earthquake, hurricane, spontaneous fermentation or heating, application of process of fire-heat or explosion.

And the plaintiff further avers that forthwith after the happening of the said loss and damage he gave notice thereof to the defendant and as soon thereafter as possible delivered to the defendant as particular an account of the said loss and damage as the nature of the case would admit.

16 And the plaintiff further avers that there was not at or since the time of making the said policy any other insurance of the said property except as mentioned in said policy and that the said building was not at or since that time appropriated, applied or used to and for the purpose of carrying on or exercising therein any trade business or vocation denominated hazardous or extra-hazardous or included in special rates.

Nevertheless although the plaintiff has kept and performed all things in the said policy mentioned on his part to be kept and performed, the defendant has not yet paid to the plaintiff the said amount of the loss and damage aforesaid or any part thereof but refuses so to do.

To the damage of the plaintiff of \$15,000 and therefore he brings his suit.

C. M. BOERMAN,  
Plaintiff's Attormney.

U. S. OF AMERICA,  
District of Porto Rico, } ss:

Antonio J. Amadeo, sworn says that the foregoing declaration is true in substance and fact.

ANTONIO JOSÉ AMADEO.

Sworn to before me this 6th day of April 1903.

A. AGUAYO,  
Deputy Clerk.

Præcipe for Summons.

DISTRICT OF PORTO RICO :

|                                       |   |               |
|---------------------------------------|---|---------------|
| JOSÉ ANTONIO AMADEO                   | } | No. 142, 143. |
| vs.                                   |   |               |
| ROYAL INSURANCE COMPANY OF LIVERPOOL. |   |               |
| JOSÉ ANTONIO AMADEO                   | } |               |
| vs.                                   |   |               |
| ROYAL INSURANCE COMPANY.              |   |               |

Clerk of said court :

Please issue summons in the above case returnable to May term.

C. M. BOERMAN,  
Attorney for Plaintiff.

Thereupon there were issued out of the clerk's office of said court certain writs of summons in this cases directed to the marshal of this district and against the said defendant, which writs of summons are as follows, to wit:

17 In the District Court of the United States for Porto Rico.

|  |                  |
|--|------------------|
| ANTONIO JOSÉ AMADEO                      | } C. L. No. 142. |
| vs.                                      |                  |
| THE ROYAL INSURANCE COMPANY OF LIVERPOOL |                  |

Summons.

UNITED STATES OF AMERICA, } ss:  
District of Porto Rico,

The President of the United States of America to the marshal of the district of Porto Rico, Greeting:

You are hereby commanded to summon the Roayl Insurance Co. of Livarpool if it can be found in your district, to ba and appear before the United States district court for the district of Porto Rico, at the court rooms of said court in the city of Ponce on the 11th day of May 1903, then and there to answer unto Antonio José Amadeo on an action assumpsit damages \$9000. and have you then and there this writ.

Failing to so appear judgement may be entered against the said defendant by default.

Witness: the Hon. Wm. Holt, judge of the district court of the United States for Porto Rico, this 21st day of April A. D. 1903, and of the Independence of the United States of America the 127th.

Attested:

RICARDO NADAL Clerk,  
By A. AGUAYO, Deputy.

In the District Court of the United States for Porto Rico.

|   |            |
|---|------------|
| ANTONIO JOSÉ AMADEO                       | } No. 143. |
| vs.                                       |            |
| THE ROYAL INSURANCE COMPANY OF LIVERPOOL. |            |

Summons.

UNITED STATES OF AMERICA, }  
District of Porto Rico.

The President of the United States of America to the marshal of the district of Porto Rico, Greeting:

You are hereby commanded to summon the Royal Insurance Company of Liverpool if it can be found in your district, to be and ap-

pear before the United States district court for the district of Porto Rico at the court rooms of said court in the city of Ponce on the 11th day of May 1903, then and there to answer unto Antonio José Amadeo on an action assumpsit, damages \$15,000, and have you then and there this writ.

Failing to so appear judgement may be entered against the said defendant by default.

Witness: the Hon. Wm. H. Holt, judge of the United States district court for Porto Rico, this 21st. day of April A. D. 1903, and of the Independence of the United States of America the 127th.

Attest:

RICARDO NADAL, Clerk,  
By A. AGUAYO, Deputy.

And afterwards to wit: on the 23rd. day of April in the year last aforesaid came the marshal of this district to whom the said writs were in form aforesaid directed and returned the same into the clerk's office of the court aforesaid with his proceeding endorsed thereon as follows, to wit:

#### Return on Service of Writ.

UNITED STATES OF AMERICA, }  
The District of Porto Rico, } ss:

I hereby certify and return that I served the annexed writ on the Royal Insurance Company of Liverpool by handing to and leaving a true and correct copy thereof with Nicasio Arzuaga a member of the firm of Sobrinos de Ezquiaga chief agents within the district of the Royal Insurance Co. of Liverpool, personally at San Juan in said district on the 23rd. day of April A. D. 1903.

E. S. WILSON,  
U. S. Marshal.  
J. A. MILLER, Deputy.

#### Return on Service of Writ.

UNITED STATES OF AMERICA, }  
District of Porto Rico, } ss:

I hereby certify and return that I served the annexed writ on the therein named The Royal Insurance Company of Liverpool by handing of and leaving a true and correct copy thereof with Nicasio Arzuaga a member of the firm of Sobrinos de Ezquiaga chief agents of the Royal Insurance Company of Liverpool within the district, personally at San Juan in said district on the 23rd day of April A. D. 1903.

E. S. WILSON,  
U. S. Marshal.  
J. L. MILLER, Deputy.

19 And afterwards, to wit: on the 11th day of May in the year last aforesaid came the defendant by its attorneys and filed in the clerk's office of said court a demurrer to the declaration in each of these cases, which said demurrers are as follows to wit:

In the District Court of the United States for Porto Rico.

|                          |   |                      |
|--------------------------|---|----------------------|
| ANTONIO JO-É AMADEO      | } | Common Law. No. 142. |
| VS.                      |   |                      |
| ROYAL INSURANCE COMPANY. |   |                      |

Demurrer to the Declaration.

Now come- the defendant above named by its attorneys Dexter & Hord, and demurs to the declaration herein filed

First. For a reason that it does not state a cause of action; second: because upon the face thereof and by the admissions of the plaintiff contained therein, it appears that the said alleged cause of action is prescribed and barred by the statute of limitation and the period of prescription is provided in the civil and commercial codes.

DEXTER AND HORD,  
Attorneys for Defendant.

In the District Court of the United States for Porto Rico, Sitting at Ponce.

|                         |   |                |
|-------------------------|---|----------------|
| JOSÉ ANTONIO AMADEO     | } | C. L. No. 143. |
| VS.                     |   |                |
| ROYAL INSURANCE COMPANY |   |                |

Demurrer to Declaration.

Now comes defendant above mentioned, by its attorneys Dexter and Hord, and demurs to the declaration herein filed:

First. For the reason that it does not state a cause of action; second: because upon the face thereof and by the admission of the plaintiff contained therein, it appears that the said alleged cause of action is prescribed and barred by the statute of limitations and the period of prescription as provided in the civil and commercial code.

DEXTER AND HORD,  
Attorneys for Defendant.

20 And the same day in the year aforesaid came the plaintiff in said causes and filed in the clerk's office of the court aforesaid a joinder on demurrer, which said joinder on demurrer is as follows:

## Joinder on Demurrer.

J. A. AMADEO  
vs.  
ROYAL INSURANCE COMPANY. } C. L. No. 142.

And the plaintiff says that the said declaration and the matters therein contained in manner and form as the same are above set forth are sufficient in law for him to maintain his aforesaid action and he is ready to verify the same as the court shall direct: Wherefore inasmuch as the defendant has not denied the said declaration the plaintiff prays judgement and his damages etc. to be adjudged to him.

C. M. BOERMAN,  
Plaintiff's Attorneys.

## United States District Court for Porto Rico.

J. A. AMADEO  
vs.  
ROYAL INSURANCE COMPANY. } C. L. No. 143.

And the plaintiff says that the said declaration and the matters therein contained in manner and form as the same are above set forth are sufficient in law for him to maintain his aforesaid action and he is ready to verify the same as the court shall direct: Wherefore inasmuch as the defendant has not denied the said declaration the plaintiff prays judgement and his damages etc. to be adjudged to him.

C. M. BOERMAN,  
Plaintiff's Attorney.

Thereupon the following entries were made upon the journal of said court in said causes, to wit:

JOSÉ ANTONIO AMADEO  
vs.  
TH- ROYAL INSURANCE Co. } No. 142.

21 Now comes the defendant by its attorneys Dexter and Hord and files a demurrer to the declaration herein and the same — been heard is overruled and the defendant thereupon files a plea.

JOSE ANTONIO AMADEO  
vs.  
THE ROYAL INSURANCE COMPANY. } No. 143.

Now comes the defendant herein by its attorneys Dexter & Hord and files a demurrer to the declaration herein and the same — been heard is overruled and the defendant thereupon files a plea.

And the said pleas filed by the defendant herein are as follows, to wit:

In the United States District Court for Porto Rico, Sitting at Ponce.

|                          |            |
|--------------------------|------------|
| ANTONIO JOSÉ AMADEO      | } No. 142. |
| vs.                      |            |
| ROYAL INSURANCE COMPANY. |            |

Plea.

Now comes defendant above named, by its attorneys Dexter and Hord and for its various pleas to the declaration herein filed says:

First. Defendant never promised and is not indebted to plaintiff in manner and form as in the said declaration alleged; and of this it put itself upon the country.

Second. For a second and further plea to the said declaration, defendant says that plaintiff ought not to have and recover herein for the reason that the alleged cause of action did not accrue within fifteen years before this suit; and of this it puts itself upon the country.

Third. For third and further plea to the said declaration defendant says that plaintiff ought not to have or recover herein for the reason that plaintiff has no interest in the proceeds of the policy sued on nor did he have at the time of the institution of this suit, the said policy and the proceeds thereof having been transferred, sold and assigned by him by notorial document on — 1885.

Fourth. For a fourth and further plea to said declaration defendant says that plaintiff ought not to recover herein for the  
22 reason that there has been no such damage or loss as set forth in the said declaration, and this the defendant is ready to verify.

Fifth. For a fifth and further plea herein defendant says that plaintiff ought not to recover herein for the reason that within fifteen days after the fire described in said declaration there was not delivered to defendant a particular account as was reasonable practicable of the several articles or property damaged or destroyed by fire and of all other articles and matters insured under said policy, with the estimated value of each of them respectively, having regard to their several values at the time of the fire; also stating the nature and amount of the loss or damage occasioned to each and any such article or matter, and of the interest of the insured therein, and in support thereof such vouchers, proofs and explanations and other evidence as was required by and on behalf of defendant, together with a statutory declaration of the truth of all the same, although all of said settlements, proofs declarations and explanations were demanded by the defendant; and no such proofs, claims, settlements or declarations have at any time been delivered to defendant; and of this defendant puts itself upon the country.

Sixth. For a sixth and further plea to the declaration herein defendant says that the plaintiff ought not to recover for the reason that immediately after the fire plaintiff made a claim in general terms for the full value of the said policy but without specifying the articles or giving in detail the information and proofs demanded of plaintiff by the defendant as set forth in the fifth plea next above pleaded; but said claim was made for the full amount of said policy, and was fraudulent in this, to wit: that the value of said property insured by the policy described in the declaration herein at the time of said insurance was not the sum specified in said policy, but that said value was much *the less* than the amount contained in said policy, and that this insurance, sued on herein, was obtained by the false and fraudulent representations of plaintiff and without the knowledge of defendant as to the real value of said property so insured. And further the said claim for the total amount of the said policy so made as aforesaid was false and fraudulent for the reason that at the time of the said fire the property so described in the said policy sued on herein was greatly less the said sum so claimed as aforesaid by plaintiff; and this defendant is ready to verify.

Seventh. For seventh and further plea defendant says that plaintiff ought — to have and recover herein for the reason that the said fire as described in the declaration herein, and the destruction and loss of the property covered by the policy sued on herein, was caused and occasioned by the procurement, means, design and voluntary act of the plaintiff, who caused the said property set fire for the fraudulent purpose of recovering from this defendant the amount of the said policy; and this defendant is ready to verify.

DEXTER & HORD,  
Attorneys for the Defendant.

Miguel L. Arzuaga, being duly sworn, upon his oath says that he is one of the agents of the defendant company in the above entitled cause, that he has read the foregoing plea, and that the facts therein stated are true to the best of his knowledge and belief.

MIGUEL ARZUAGA.

Swor- to and subscribed before me this May 11th, 1903.

A. AGUAYO,  
D. C. U. S. Court.

|                          |   |                      |
|--------------------------|---|----------------------|
| JOSÉ ANTONIO AMADEO      | } | Common Law. No. 143. |
| VS.                      |   |                      |
| ROYAL INSURANCE COMPANY. |   |                      |

Plea.

Now comes defendant above named, by its attorneys Dexter and Hord and for its various pleas to the declaration herein filed, says:  
First. Defendant never promised and is not indebted to plaintiff



in manner and form as in said declaration alleged; and of this it puts itself upon the country.

Second. For a second and further plea to the said declaration, defendant says that plaintiff ought not to have and recover  
24 herein for the reason that the alleged cause of action did not accrue within fifteen years before this suit; and of this it puts itself upon the country.

Third. For a third and further plea to the said declaration defendant says that plaintiff ought not to have and recover herein for the reason that plaintiff has no interest in the proceeds of the policy sued on, nor did he have at the time of the institution of this suit, the said policy and proceeds thereof having been transferred, sold and assigned by him by notarial document on — 188—.

Fourth. For a fourth and further plea to the said declaration defendant says that plaintiff ought not to recover herein for the reason that there has been no such damage or loss as set forth in the said declaration, and this defendant is ready to verify.

Fifth. For a fifth and further plea herein defendant says that plaintiff ought not to recover herein for the reason that within fifteen days after the fire described in said declaration there was not delivered to the defendant a particular account as was reasonable practicable of the several articles or property damaged or destroyed by fire, and of all other articles and matters insured under the said policy, with the estimated value of each of them respectively, having regard to their several values at the time of the fire; also stating the nature and amount of the loss or damage occasioned to each and any such article or matter, and of the interest of the insured therein, and in support thereof of such vouchers, proofs and explanations and other evidence as was required by and on behalf of the defendant, together with a statutory declaration of the truth of all of the same, although all of said settlements, proofs, declaration and explanations were demanded by the defendant; and no such proofs, claims, settlements or declarations and explanations have at any time been delivered to defendant; and of this defendant puts itself upon the country.

Sixth. For a sixth and further plea to the declaration herein defendant says that plaintiff ought not to recover for the reason that immediately after the fire plaintiff made a claim in general terms for the full value of the said policy but without specifying  
25 the articles or giving in detail the information and proofs demanded of plaintiff by defendant as set forth in the fifth plea next above pleaded; but said claim was made for the full amount of said policy, and was fraudulent in this, to wit: that the value of said property insured by the policy described in the declaration herein at the time of said insurance was not the sum specified in said policy, but that said value was much less than the amount contained in said policy, and that his insurance, sued on herein, was obtained by the false and fraudulent representations of the plaintiff and without the knowledge of the defendant as to the real value of

the said property so insured. And further the said claim for the total amount of the said policy so made as aforesaid was false and fraudulent for the reason that at the time of said fire the property so described in the said policy sued on herein was greatly less the said sum so claimed as aforesaid by plaintiff; and this defendant is ready to verify.

Seventh. For a seventh and further plea defendant says that plaintiff ought not to have or recover herein for the reason that said fire as described in the declaration herein, and the destruction and loss of the property covered by the policy sued on herein was caused and occasioned by the procurement, means, designs and voluntary act of the plaintiff, who caused the said property to be set fire for the fraudulent purpose of recovering from this defendant the amount of the said policy; and this defendant is ready to verify.

DEXTER & HORD,  
Attorneys for Def't.

Miguel L. Arsuaga being duly sworn, upon his oath says that he is one of the agents of the defendant company in the above entitled cause, that he has read the foregoing plea, and that the facts stated therein are true to the best of his knowledge and belief.

MIGUEL L. ARSUAGA.

Sworn to and subscribed before me this May 11th, 1903.

A. AGUAYO,  
D'ty Clerk U. S. Court.

And afterwards to wit: on the 12th day of May in the year aforesaid, 1903, came the plaintiff by his attorney and filed in the clerk's office of said court his replication in the said causes, which  
26 said replications are as follows, to wit:

United States District Court for Porto Rico.

|                          |   |                    |
|--------------------------|---|--------------------|
| J. A. AMADEO             | } | Com. Law. No. 142. |
| vs.                      |   |                    |
| ROYAL INSURANCE COMPANY. |   |                    |

1. And the plaintiff says that as to the first plea of the defendant whereof it puts itself upon the country the plaintiff does the same.

2. And as to the second and third pleas of the defendant the plaintiff says that the same and the matters therein pleaded in manner and form are not sufficient in law to bar him from having his aforesaid action and that he is not bound by law to answer the same, and this he is ready to verify, wherefore for want of sufficient plea in this behalf the plaintiff prays judgment.

3. As to the fourth plea, the plaintiff puts himself upon the country.

4. As to the fifth plea plaintiff states that all the notices proofs and other papers required by the policy to be delivered within fifteen days were so delivered, and this plaintiff prays may be inquired by the country.

5. As to the sixth plea plaintiff avers there was no fraud intended or committed neither in the policy nor in the proofs or claim, and this he prays may be inquired by the country.

6. As to the seventh plea plaintiff says that the fire was not of incendiary origin or by his negligence and of this he puts himself upon the country.

C. M. BOERMAN,  
Plaintiff's Attorney.

UNITED STATES OF AMERICA, }  
District of Porto Rico, } ss :

J. A. Amadeo on oath says that the foregoing pleas are true in substance and fact.

ANTONIO J. AMADEO.

Sworn to before me this 12th day of May, 1903.

A. AGUAYO,  
Deputy Clerk U. S. Court.

United States District Court for Porto Rico.

27 J. A. AMADEO }  
vs. } Com. Law. No. 143.  
ROYAL INSURANCE CO. }

1. And the plaintiff says that as to the first plea of the defendant whereof it puts itself upon the country the plaintiff does the same.

2. And as to the second and third pleas of the defendant the plaintiff says that the same and the matters therein pleaded in manner and form are not sufficient in law to bar him from having *from* having his aforesaid action and that he is not bound by law to answer the same, and this he is ready to verify, wherefore for want of a sufficient plea in this behalf the plaintiff prays judgment.

3. As to the fourth plea the plaintiff puts himself upon the country.

4. As to the fifth plea plaintiff states that all the notices proofs and other papers required by the policy to be delivered within fifteen days were so delivered, and this plaintiff prays may be inquired by the country.

5. As to the sixth plea plaintiff avers that there was no fraud intended or committed neither in the policy nor in the proofs or claim, and this he prays may be inquired by the country.

6. As to the seventh plea plaintiff says that the fire was not of in-

cendiary origin or by his negligence and of this he puts himself upon the country.

C. M. BOERMAN,  
Plaintiff- Attorney.

UNITED STATES OF AMERICA, } ss:  
District of P. R.,

J. A. Amadeo on oath says that the foregoing pleas are true in substance and fact.

ANTONIO J. AMADEO.

Sworn to before me this 12th day of May 1903.

A. AGUAYO,  
D. C. U. S. Court.

And afterwards to wit: on the 13th day of May in the year last aforesaid the defendant by its attorneys filed in the clerk's office of said court a motion to strike certain parts of the replication, which said motion is as follows, to wit:

United States District Court for Porto Rico, Sitting at Ponce.

ANTONIO JOSÉ AMADEO  
vs.  
ROYAL INSURANCE COMPANY. } No. 142. C. L.

28

Motion to Strike.

Now comes the defendant by its attorneys Dexter and Hord and moves to strike from the replication herein the following paragraphs, or part thereof, to wit:—

Those paragraphs or part of the said replication which purport to be a replication to the fifth, sixth and seventh pleas of the defendant herein for the reason that the same are argumentative, trivial and not good pleading.

DEXTER AND HORD,  
Attorneys for Defendant.

United States District Court for Porto Rico, Sitting at Ponce.

ANTONIO JOSÉ AMADEO  
vs.  
ROYAL INSURANCE COMPANY. } C. L. No. 143.

Motion to Strike.

Now comes the defendant herein by its attorneys Dexter and Hord, and moves the court to strike from the replication herein the following paragraphs or parts thereof, to wit:—

Those paragraphs or parts of the said replication which purport to be a replication to the fifth, sixth and seventh pleas of the defendant herein for the reason that the same are argumentative, trivial and not good pleading.

DEXTER AND HORD,  
Attorneys for Defendant.

Thereupon the following entries were made upon the journal of said court in said causes, to wit:—

|                         |   |          |
|-------------------------|---|----------|
| JOSÉ ANTONIO AMADEO     | } | No. 142. |
| vs.                     |   |          |
| THE ROYAL INSURANCE CO. |   |          |

Now comes the defendant herein by its attorneys Dexter and Hord and files a motion to strike part of plaintiff's replication and the same being heard is submitted.

|                         |   |          |
|-------------------------|---|----------|
| JOSÉ ANTONIO AMADEO     | } | No. 143. |
| vs.                     |   |          |
| THE ROYAL INSURANCE CO. |   |          |

29 Now comes the defendant herein by its attorneys Dexter and Hord and files a motion to strike part of plaintiff's replication and the same being heard is submitted.

And afterwards to wit, on the 18th day of May in the year aforesaid the following entries were made upon the journal of said court in said causes, to wit:

|                              |   |          |
|------------------------------|---|----------|
| JOSÉ ANTONIO AMADEO          | } | No. 142. |
| vs.                          |   |          |
| THE ROYAL INSURANCE COMPANY. |   |          |

Now comes the plaintiff herein by his attorney C. M. Boerman Esqr. and tenders an amended complaint to which the defendant objects and the same being allowed to be filed the defendant excepts.

|                              |   |          |
|------------------------------|---|----------|
| JOSÉ ANTONIO AMADEO          | } | No. 143. |
| vs.                          |   |          |
| THE ROYAL INSURANCE COMPANY. |   |          |

Now comes the plaintiff herein by his attorney C. M. Boerman Esqr. and tenders an amended complaint to which the defendant objects and the same being allowed to be filed the defendant excepts.

And the said amendment to declaration filed by the plaintiff in these cases is as follows to wit:

## United States District Court for Porto Rico.

ANTONIO JOSÉ AMADEO  
 against  
 THE ROYAL INSURANCE COMPANY. }

The plaintiff by leave of court amends his complaint declaration as follows,

In the title of the case after the name of the plaintiff add the following words: "for the use and together with the Pastor Marquez Company in liquidation."

In the body of the declaration add at the end of it the following paragraphs:

30 "And plaintiff avers that on or about August 1885 the said policy was assigned to the Pastor Marquez Company, which is a company in liquidation and of which Pedro Salazar is liquidator."

C. M. BOERMAN,  
 Plaintiff's Attorney.

A. J. Amadeo on oath says that the foregoing amendment to the declaration is true.

ANTONIO J. AMADEO.

Sworn to this 18th day of May 1903.

A. AGUATO, D. C.

## United States District Court for Porto Rico.

ANTONIO JOSÉ AMADEO  
 against  
 THE ROYAL INSURANCE COMPANY. }

The plaintiff by leave of court amends his complaint declaration as follows:

In the title of the case after the name of the plaintiff add the following words: "for the use of and together with the Pastor Marquez Company in liquidation."

In the body of the declaration add at the end of it the following paragraph:

"And plaintiff avers that on or about August 1885 the said policy was assigned to the Pastor Marquez Company, which is a company in liquidation and of which Pedro Salazar is liquidator."

C. M. BOERMAN,  
 Plaintiff's Attorney.

A. J. Amadeo on oath says that the foregoing amendment to the declaration is true.

ANTO. J. AMADEO.

Sworn to this May 18th 1903.

A. AGUAYO, D. C.

And afterwards to wit; on the 21st day of May, 1903 the following entries were made upon the journal of said court, in said causes, to wit:

JOSÉ ANTONIO AMADEO  
vs.  
ROYAL INSURANCE COMPANY. } No. 142.

31 Now comes the defendant herein by its attorneys Dexter and Hord and with permission of the court first had withdraws its motion to strike part of replication and by consent said replication is traversed upon the record.

JOSÉ ANTONIO AMADEO  
vs.  
ROYAL INSURANCE COMPANY. } No. 143.

Now comes the defendant herein by its attorneys Dexter and Hord and with permission of the court first had withdraws its motion to strike part of replication and by consent said replication is traversed upon the record.

And on the 25th day of May in the year last aforesaid come the defendant by its attorneys and filed in the clerk's office of said court a motion to consolidate, which said motion is as follows, to wit:

United States District Court for Porto Rico.

ANTONIO J. AMADEO  
vs.  
NORTHERN ASSURANCE COMPANY. } No. 141.

ANTONIO J. AMADEO  
vs.  
ROYAL INSURANCE CO. } No. 142.

ANTONIO J. AMADEO  
vs.  
ROYAL INSURANCE CO. } No. 143.

FEDERICO AMADEO  
vs.  
ROYAL INSURANCE CO. } No. 144.

FEDERICO AMADEO  
vs.  
ROYAL INSURANCE CO. } No. 145.

Motion to Consolidate.

32 Now come the defendants in the above numbered and styled causes by their attorneys Dexter and Hord and move



the court to consolidate the said suits and in support of said motion represent that the said suits are between the same parties and that the issues therein are the same; that by consolidating said causes great expenses will be saved to the parties and to this court and otherwise much unnecessary time of the court will be taken and great trouble be had in the procurement of juries to try the same.

DEXTER AND HORD,

Attorneys for Defendants.

And afterwards to wit; on the 27th — May in the year last afore-said an entry was made upon the journal of said court in said causes, which said entry is as follows, to wit:

|                              |   |          |
|------------------------------|---|----------|
| JOSÉ ANTONIO AMADEO ET AL.   | } | No. 142. |
| vs.                          |   |          |
| THE ROYAL INSURANCE COMPANY. |   |          |

|                              |   |          |
|------------------------------|---|----------|
| JOSÉ ANTONIO AMADEO ET AL.   | } | No. 143. |
| vs.                          |   |          |
| THE ROYAL INSURANCE COMPANY. |   |          |

|                              |   |          |
|------------------------------|---|----------|
| FEDERICO AMADEO              | } | No. 144. |
| vs.                          |   |          |
| THE ROYAL INSURANCE COMPANY. |   |          |

|                              |   |          |
|------------------------------|---|----------|
| FEDERICO AMADEO              | } | No. 145. |
| vs.                          |   |          |
| THE ROYAL INSURANCE COMPANY. |   |          |

The motion to consolidate the above entitled causes is called up heard and sustained to the extent of consolidating cases No. 142 and 143 and also of consolidating cases No. 144 and 145, and cases No. 142 and 143 are to be tried together and 144 and 145 are to be tried together.

And afterwards to wit; on the 12th day of January A. D. 1904 an entry was made upon the journal of said court in said causes, which said entry is as follows, to wit:

|    |                            |   |          |
|----|----------------------------|---|----------|
| 33 | JOSÉ ANTONIO AMADEO ET AL. | } | No. 142. |
|    | vs.                        |   |          |
|    | THE ROYAL INSURANCE CO.    |   |          |

and

|  |                            |   |          |
|--|----------------------------|---|----------|
|  | JOSÉ ANTONIO AMADEO ET AL. | } | No. 143. |
|  | vs.                        |   |          |
|  | THE ROYAL INSURANCE CO.    |   |          |

The demurrer to the second plea herein is overruled to which plaintiff-excepts, wherein plaintiff-files a replication to the second plea to which the defendant files a demurrer, which is sustained and plaintiffs except.

And the said replication to the second plea filed by the plaintiff-herein is as follows to wit:

United States District Court for Porto Rico.

J. A. AMADEO ET AL. }  
 VS.  
 ROYAL INSURANCE CO. }

And as to the second and third pleas of the defendant above pleaded the plaintiffs say that the same limitation and prescription therein pleaded was inter-upted by extrajudicial demand and this the plaintiffs pray may be inquired into by the country.

Wherefore the plaintiffs pray judgment and their costs, etc.

C. M. BOERMAN,  
 Plaintiffs' Attorney.

Ermelindo Salazar under oath says that the foregoing plea to replication is true in substance and fact.

ERMELINDO SALAZAR.

Sworn to before me this 12th day of January, 1904.

A. AGUAYO, D. C.

And the said demurrer to replication to second plea filed by the defendant herein is as follows, to wit:

United States District Court for Porto Rico.

ANTONIO JOSÉ AMADEO }  
 VS.  
 ROYAL INSURANCE CO. } No. 142.

34

ANTONIO JOSÉ AMADEO }  
 VS.  
 ROYAL INSURANCE CO. } No. 143.

Now comes defendant herein by its attorneys, and demurring to plaintiff's replication to the second plea herein says that the same is insufficient in law; whereupon etc.

ROYAL INSURANCE COMPANY,  
 By F. H. DEXTER &  
 HENRY F. HORD, Its Attorneys.

And afterwards, to wit: on the 15th day of January in the year last aforesaid 1904, an entry was made upon the journal of said court in said causes, which said entry is as follows, to wit:

|                              |   |          |   |               |
|------------------------------|---|----------|---|---------------|
| ANTONIO JOSÉ AMADEO ET AL.   | } | No. 142. | } | Consolidated. |
| VS.                          |   |          |   |               |
| THE ROYAL INSURANCE COMPANY  |   |          |   |               |
| and                          |   |          |   |               |
| ANTONIO JOSÉ AMADEO          | } | No. 143. |   |               |
| VS.                          |   |          |   |               |
| THE ROYAL INSURANCE COMPANY. |   |          |   |               |

## Judgment.

On this 15th day of January, 1904, came on these causes for hearing the same having been heretofore consolidated by order of court and both parties *been* present by their respective attorneys and plaintiffs having heretofore refused to plead further to the second plea filed herein by defendant and now failing to offer proofs as to the other issues made and tendered herein, judgment is by the court entered for the defendant. Wherefore it is by the court ordered and adjudged that the plaintiffs herein Antonio José Amadeo for himself and for the use and benefit of the firm of Pastor Marquez and Company and Pedro Salazar as liquidating partner of the said Pastor Marquez and Company take nothing by either of their said suits and that the defendant go hence without day and recover of and from the said plaintiffs all costs in this behalf incurred or expended for which execution may issue. To all of which plaintiffs by their attorney then and there in open court, excepted.

It is further ordered that plaintiffs have until March 15th, 1904 to file their bill of exceptions herein and that the amount of the appeal bond be fixed at the sum of five hundred dollars, for said causes jointly.

On the 14th day of March, 1904, the plaintiffs filed their bill of exceptions which is as follows, to wit :

## United States District Court for Porto Rico.

|                              |   |                           |
|------------------------------|---|---------------------------|
| JOSÉ ANTONIO AMADEO ET AL.   | } | Common Law. Nos. 142-143, |
| against                      |   |                           |
| THE ROYAL INSURANCE COMPANY. |   | Consolidated.             |

Be it remembered that at a term of the district court of the United States for Porto Rico held in Ponce on the 12th day of January, 1904, a cause therein pending wherein Jose Antonio Amadeo and The Pastor Marquez Company were plaintiffs and The Royal Insurance Company of Liverpool was defendant, came on to be heard before the Honorable William H. Holt judge of said court upon the

demurrer of the plaintiffs aforesaid to the second plea of the defendant to the declaration, and thereupon the court overruled said demurrer, to which ruling of the court the plaintiffs excepted.

Thereupon the plaintiffs having filed a replication to said second plea of the defendant, the defendant demurred to said replication and the court upon hearing the argument of said demurrer sustained the demurrer to said replication, to which ruling the plaintiffs excepted.

This bill may not be necessary to the appeal,—in fact the court so thinks, but counsel desiring it, it is approved and signed this March 14, 1904.

WM. H. HOLT, Judge.

And on the 20th day of September, 1904, the plaintiffs filed a petition for a writ of error and assignment of errors in these cases as follows, to wit :

#### Petition for a Writ of Error.

United States District Court for Porto Rico.

ANTONIO J. AMADEO ET AL. }  
VS.  
ROYAL INSURANCE COMPANY. }

The plaintiffs in the above entitled cause feeling themselves aggrieved by the judgment entered on the 15th day of January 1904, come now by Charles M. Boerman their attorney and petition this court for an order allowing said plaintiffs to prosecute a writ of error to the Supreme Court of the United States under and according to the laws of the United States made and provided in that behalf.

And your petitioners will for ever pray.

C. M. BOERMAN,  
Attorney for the Plaintiffs.

#### Assignment of Errors.

United States District Court for Porto Rico.

ANTONIO J. AMADEO ET AL. }  
VS.  
ROYAL INSURANCE COMPANY. }

Come now the plaintiffs in the above entitled case and file the following assignment of errors upon which they will rely — their prosecution of the writ of error in the above entitled cause.

1. The court erred in overruling the demurrer of the plaintiffs to the second plea of the defendant to the declaration, and by deciding that said plea of limitation is a good plea, contrary to the law.

2. The court erred in sustaining the demurrer of the defendant to the replication of the plaintiffs to the said second plea of the defendant and in deciding and adjudging that there is no interruption of limitation by extrajudicial demand of plaintiff- contrary to law.

3. The court erred in rendering judgment for the defendant and against the plaintiffs upon the pleadings in said cause and that said judgment is contrary to the law and the facts as stated in the pleadings in said cause.

Wherefore the said plaintiffs in error pray that the judgment of said court be reversed and such directions be given that full force and efficacy may insure to plaintiffs by their said pleas.

C. M. BOERMAN,  
Attorney for Plaintiffs.

37 And on the 21st of September, A. D. 1904, the court made the following order, to wit:

In the District Court of the United States for Porto Rico.

ANTONIO J. AMADEO ET AL. }  
VS.  
ROYAL INSURANCE COMPANY. }

Upon motion of C. M. Boerman attorney for plaintiff, and upon filing a petition for a writ of error and an assignment of errors, it is ordered that a writ of error be and hereby is allowed to have reviewed in the Supreme Court of the United States, the judgment heretofore entered herein.

This at San Juan, Porto Rico, this twenty first day of September, A. D. 1904.

CHAS. F. McKENNA,  
Judge of the United States Court for Porto Rico.

Appeal Bond. Filed and Approved Dec. 20th, 1904.

United States District Court for Port Rico.

José ANTONIO AMADEO and PASTOR MARQUEZ AND COMPANY }  
VS.  
ROYAL INSURANCE CO. }

Know all men by these presents that we, Pastor Marquez and Co. as principal and Lucas Amadeo of Barros and Felipe Salazar of Ponce as sureties are held to the defendant above named The Royal

Insurance Company of Liverpool in the sum of five hundred dollars to be paid to the said company or its assigns to which payment well and truly to be made we bind ourselves and each of us jointly and several-y and our successors and assigns firmly by these presents.

Sealed with our seals this 30th day of November, 1904.

Whereas the above named plaintiffs have sued out a writ of error to the Supreme Court of the United States to reverse the judgment in the above entitled cause by the United States district court for Porto Rico. Now therefore the condition of this obligation is such that if the above named plaintiffs should prosecute said writ to effect and answer all costs and damages if they shall fail to  
38 make good their plea then this obligation to be void, otherwise to remain in full virtue and force.

PASTOR MARQUEZ & CO., En Liqui.  
E. SALASAR.  
FELIPE SALAZAR.  
LUCA- AMADEO.

Lucas Amadeo and Felipe Salazar each of them being duly sworn says that he is worth \$2,500.00 over and above his legal liabilities.

FELIPE SALAZAR.  
LUCAS AMADEO.

S-or-n to before me this 30th day of November, 1904.

A. AGUAYO,  
De'ty Clerk U. S. Court.

Before me the undersigned, clerk of the district court of the United States for Porto Rico personally appeared F. Salazar and Lucas Amadeo the persons who signed as securities in the within bond, and acknowledged the same to be their free act and deed.

This 30th day November 1904.

H. H. SCOVILLE,  
Clerk U. S. District Court of Porto Rico,  
By A. AGUAYO,  
Deputy Clerk.

Petition and Order. Filed Dec. 30th, 1904.

In the District Court of the United States for Porto Rico.

|   |   |  |
|---|---|--|
| FEDERICO AMADEO, for the Use of and<br>Jointly with The Pastor Marquez Com-<br>pany, in Liquidation,<br>vs.<br>THE ROYAL INSURANCE COMPANY. | } | C. L. Nos. 142 and 143,<br>Consolidated. |
|---|---|--|

Petition.

Chas. M. Boerman, attorney for the plaintiffs and appellants in the above entitled cause, shows to this honorable court that, because

of the great distance of Porto Rico from Washington, thirty days is too short for the preparation and transmission of the record in this case, and therefore moves and prays this court to grant sixty days additional within which the said transcript of record may be transmitted to the Supreme Court of the United States.

C. M. BOERMAN,  
Attorney for Plaintiffs.

Order.

The court hereby orders, upon the foregoing petition, that the time for filing the transcript of record be and hereby is extended to ninety days from the date of the issuance of the writ of error.

(Signed)

CHAS. F. McKENNA,  
Judge U. S. Dist. Court for Porto Rico.

In the District Court of the United States for Porto Rico.

I, H. H. Scoville, clerk of said court, do hereby certify, that the foregoing is a true and correct transcript of the record of the cause therein stated on file and of record in this office.

In witness whereof I have hereunto set my hand and affixed the seal of said court at the city of Ponce P. R., this 28th day of February A. D. 1905.

[Seal United States District Court for the District of Porto Rico.]

H. H. SCOVILLE,  
Clerk U. S. District Court of Porto Rico,  
By A. AGUAYO,  
Deputy Clerk.

40 [Endorsed:] No. 142 & 143. In the district court of the United States for Porto Rico. Antonio J. Amadeo vs. Royal Insurance Company. Transcript of record.



41 In the District Court of the United States for Porto Rico.

|  |   |  |
|--|---|--|
| ANTONIO JOSÉ AMADEO, for the Use of<br>and Together with The Pastor Marquez<br>Company, in Liquidation,<br>vs.<br>THE ROYAL INSURANCE COMPANY. | } | C. L. Nos. 142 and 143,<br>Consolidated. |
|--|---|--|

Writ of Error.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable Chas. F. McKenna, judge of the district court of the United States for Porto Rico, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court of the United States for Porto Rico, before you, between Antonio José Amadeo for the use of and together with The Pastor Marquez Company in liquidation, plaintiffs in error, and The Royal Insurance Company, defendant in error, a manifest error has happened to the great damage of the said Antonio José Amadeo for the use of and together with The Pastor Marquez Company in liquidation, plaintiffs in error, as by the complaint appears.

We being willing that error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to  
42 the Supreme Court of the United States, together with this writ, so as to have the same at the city of Washington, District of Columbia, on the 30th day of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 31st day of December, in the year of our Lord one thousand nine hundred and four.

[Seal United States District Court for the District of Porto Rico.]

H. H. SCOVILLE,  
Clerk of the U. S. Dist. Court for Porto Rico.

Allowed by  
CHAS. F. MCKENNA,  
Judge of the District Court of the  
United States for Porto Rico.

43 [Endorsed :] No. 142 & 143 In the district court of the United States for Porto Rico. Antonio José Amadeo for the use of and together with The Pastor Marquez Company in liquidation. vs. The Royal Insurance Co. Writ of error.

44 In the District Court of the United States for Porto Rico.

|   |   |  |
|---|---|--|
| ANTONIO JOSÉ AMADEO, for the Use of and<br>Together with The Pastor Marquez Com-<br>pany, in Liquidation<br>vs.<br>THE ROYAL INSURANCE COMPANY. | } | C. L. Nos. 142 and 143,<br>Consolidated. |
|---|---|--|

Citation.

UNITED STATES OF AMERICA, ss :

The President of the United States to the Royal Insurance Com-  
pany and F. H. Dexter, Esq., its attorney, Greeting :

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Wash-  
ington, District of Columbia, within thirty days from the date of  
this writ, pursuant to a writ of error filed in the clerk's office of the  
district court of the United States for Porto Rico, wherein Antonio  
José Amadeo for the use of and together with The Pastor Marquez  
Company in liquidation are plaintiffs, and you are defendant in  
error, to show cause, if any there be, why the judgment in said writ  
of error mentioned should not be corrected, and speedy justice done  
to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the  
Supreme Court of the United States of America, this 31st day of  
December, A. D. 1904, and of the Independence of the United States  
the one hundred and twenty-ninth.

[Seal United States District Court for the District of Porto Rico.]

CHAS. F. McKENNA,  
Judge of the District Court of the  
United States for Porto Rico.

45

Form No. 282.

Return on Service Writ.

UNITED STATES OF AMERICA, }  
The District of Porto Rico, } ss :

I hereby certify and return that I served the annexed citation on  
the therein-named The Royal Insurance Company by handing to  
and leaving a true and correct copy thereof with F. H. Dexter its

attorney personally at San Juan in said district on the 5th day of January, A. D. 1905.

E. S. WILSON,  
U. S. Marshal.  
— —, Deputy.

46 [Endorsed:] No. 142 & 143. In the district court of the United States for Porto Rico. Antonio José Amadeo for the use of and together with The Pastor Marquez Company in liquidation vs. The Royal Insurance Co. Citation. Marshal's fees, service, \$2.00. Expenses —. D.

Endorsed on cover: File No. 19,665. Porto Rico D. C. U. S. Term No. 200. Antonio Jose Amadeo, for the use of and together with The Pastor Marquez Company, in liquidation, plaintiffs in error, vs. The Royal Insurance Company. Filed March 15th, 1905. File No. 19,665.



**TRANSCRIPT OF RECORDS**

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**SUPREME COURT OF THE UNITED STATES**

**NOTORIOUS TERM, 1903.**

**No. 201.**

**FEDERICO AMADEO FOR THE USE OF AND JOINTLY  
WITH THE PASTOR MARQUES COMPANY, IN LIQUIDA-  
TION, PLAINTIFFS IN ERROR.**

**VS.**

**THE ROYAL INSURANCE COMPANY**

**IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF PORTO RICO.**

---

**FILED MARCH 12, 1903.**

**(19,666.)**

(19,666.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 201.

FEDERICO AMADEO FOR THE USE OF AND JOINTLY  
WITH THE PASTOR MARQUEZ COMPANY, IN LIQUIDA-  
TION, PLAINTIFFS IN ERROR,

*vs.*

THE ROYAL INSURANCE COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF PORTO RICO.

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1 At a regular term of the district court of the United States within and for the district of Porto Rico, begun and held at the city of Ponce in said district on the second Monday in January being also the 11th day of that month in the year of our Lord nineteen hundred and four and of the Independence of the United States of America the one hundred and twenty eighth.

Present : The Hon. Wm. H. Holt, judge.

Among the proceedings had were the following, to wit :

|                          |   |                 |   |               |
|--------------------------|---|-----------------|---|---------------|
| FEDERICO AMADEO          | } | No. 144.        | } | Consolidated. |
| vs.                      |   | Dgs., 10,000.   |   |               |
| ROYAL INSURANCE COMPANY. |   |                 |   |               |
| and                      |   |                 |   |               |
| FEDERICO AMADEO          | } | No. 145.        |   |               |
| vs.                      |   | Dgs., \$30,000. |   |               |
| ROYAL INSURANCE COMPANY. |   |                 |   |               |

Be it remembered that heretofore, to wit ; on the 21st day of April A. D. 1903 came the plaintiff by his attorney and filed in the clerk's office of this court a declaration and a præcipe for a writ of summons in each of the above cases, which said declarations and præcipes are as follows, to wit :

In the United States District Court for the District of Porto Rico.

|                                       |   |
|---------------------------------------|---|
| FEDERICO AMADEO                       | } |
| against                               |   |
| ROYAL INSURANCE COMPANY OF LIVERPOOL. |   |

Federico Amadeo a citizen and resident of Porto Rico by his attorney Charles M. Boerman complains of The Royal Insurance Company of Liverpool, a corporation organized under and by the laws of the United Kingdom of Great Britain and Ireland, defendant of a plea of trespass on the case on promises: for that whereas the defendant on the 29th of February 1884 made its policy of insurance and delivered the same to the mercantile society styled : Amadeo Hermanos and for the consideration therein expressed, to it paid by said society, promised in the terms of the said policy and the conditions thereto annexed, which said policy and conditions here follow in these words and figures to wit :

2 This policy of insurance witnesseth that Messrs. Amadeo Hermanos, merchants of Maunabo P. R. hereinafter called the insured, having paid to the undersigned as authorized agents of the Royal Insurance Company, hereinafter called the company the sum of

fifteen pounds for insuring against loss or damage by fire as herein-after mentioned, the property hereinafter described in the sum or several sums following, to wit:

Five hundred pounds sterling on stock of dry goods, hardware and provisions of all sorts, deposited in the building built of timber and covered with shingles, situated in the Calle del Comercio, without number in the town of Manuabo P. R.—6/00. Among said stock the insured keeps generally one puncheon of rum and fifteen gal-ons of gas petroleum. On same stock 1000 £ more are covered by this company under policy No. 2,152,247.

The company hereby agrees with the insured (but subject to the conditions on the back thereof which are to be taken as part of this policy) that if the property above described or any part thereof shall be destroyed or damage by fire at any time between the 29th day of February 1884 and four o'clock in the afternoon of the 29th day of February 1885 the company will out of their capital stock and funds make good or pay to the insured the value of the property so destroyed or the amount of such damage thereto to the amount not exceeding in respect of each or any of the several matters above specified the sum set opposite thereto respectively, and not exceeding in the whole the sum of five hundred pounds sterling, and also not exceeding in any case the amount of the insurable interest therein of the insured at the time of the happening of such fire. In witness whereof we, two of the directors of the said company by their authorized agents have hereunto set our hands and have caused the common seal of said company to be hereunto affixed, dated at Porto Rico this 29th day of February in the year of our Lord 1884,

3

and issued there.

R. BROCKBANK,

E. W. RAYNER,

Directors,

By their Attorneys, FEDERSEN WILINK & CO.,

Agents to the Company.

The conditions referred to in this policy are as follows:

1. Any material misdescription of any of the property proposed to be hereby insured or of any building or place in which property to be so insured is contained or any omission to state the existence of any hazardous trade or of any apparatus in or by which heat is produced other than grates in common fire places herein and any misstatement of or omission to state any fact material to be known for estimating the risk whether at the time of affecting the insurance or afterwards, renders this policy void as to the property affected by such misdescription, misstatement or omission respectively.

2. If after the risk has been undertaken by the company anything whereby the risk is increased be done to in or upon property hereby insured or to upon or in any building or place in which in which property hereby insured is contained, or if any property hereby insured is removed from the building or place in which it is herein

described as being contained or if any addition to the risk arise from any other cause whatsoever without in each and every such case the assent or sanction of the company signified by indorsement thereon or if the insured shall refuse or neglect to pay any further premium which may be demanded in consequence of any increase of risk, the insurance as to the property thereby affected ceases immediately thereupon to attach, and if by reason of such alteration or addition or from any cause whatever the company or its agents shall desire to terminate the insurance affected by this policy it shall be lawful for the company or its agents so to do by notice to the insured or his representative and to require this policy to be given up for the purpose of being cancelled, provided that in any such case the company shall refund to the insured a rateable proportion of the unexpired time thereof for the — of the premium received for the insurance.

3. This policy does not cover property held in trust or on commission unless expressly described as such, nor china glass looking glasses, jewels glass clocks watches trinkets, medals curiosities

4. lies manuscripts, prints, paintings, drawings, sculptures, musical mathematical and philosophical instruments, patterns, models and moulds unless specially mentioned in the policy, nor deeds bonds bills of exchange, promissory notes, money security for money, stamps, and books of accounts, nor gun-powder, nor loss or damage by fire happening during the existence of any invasion, foreign enemy, rebellion insurrection, riot civil commotion, military or usurped power or martial law within the country or locality in which the property insured is situated unless proof be made to the satisfaction of the directors that such loss or damage was not occasioned by or connected with but occurred from a cause or causes independent of the existence of such invasion foreign enemy, rebellion, insurrection riot civil commotion, military or usurped power, or martial law. And this policy does not cover loss or damage occasioned by or through any earthquake or hurricane or by or through the spontaneous fermentation or heating of the subject insured, nor goods destroyed or damaged while undergoing any process by which the application of fire heat is necessary, nor loss or damage by explosion except loss or damage to a building or property contained therein caused by explosion of gas in such building not being a building in which gas is manufactured.

4. No insurance proposed to the company is to be considered in force until the premium be actually paid. No receipts for any premiums of insurance shall be valid or available for any purposes whatever except as are printed and issued from the company office and signed by one of the clerks or agents of the office and impressed with the seal of the company, and any condition or proviso contained in, endorsed upon or referred to in any such receipt shall be taken as a part of this policy.

5. This policy ceases to be in force as to any property hereby insured which shall pass from the insured to any other person other-

wise than by will or operation of law unless notice thereof be given to the company and the subsistence of the insurance in favor of such other person be declared by a memorandum endorsed thereon by or in behalf of the company.

5      6. On the happening of any loss or damage by fire to any of the property hereby insured the insured must forthwith give notice in writing thereof to the company and within fifteen days at latest deliver to the company as particular an account as may be reasonably practicable of the several articles or matters damaged or destroyed by fire and also of all other articles and matters insured by this company policy with the estimated value of each of them respectively having regard to their several values at the time of the fire, and also of the nature and amount of the loss or damage occasioned to each or any such articles or matter, and of the interest of the insured therein, and in support thereof give all such vouchers proofs and explanations and other evidence as may be reasonably required by or on behalf of the company together with if required a statutory declaration of the truth of the account, and in default thereof no claim in respect of such loss or damage shall be payable or sustainable unless and until such notice account proof and explanations or evidence respectively shall have been given or produced as aforesaid, and such statutory declaration if required shall have been made.

7. No profit nor advantage of any kind is to be included in any claim for loss or damage under this policy and if the claim be in any respect fraudulent or if any false statutory declaration be made or used in support thereof, or if the fire be occasioned by or through the procurement or with the knowledge or connivance of the insured, all benefit under this policy is forfeited.

8. In case of damage by the removal of property to escape conflagration this company will contribute thereto in the proportion the insured hereby shall bear to the whole value of such property before removal, but the company shall not be held liable for property stolen.

9. The company may if they think fit at their option reinstate or replace the property damaged or destroyed instead of paying the amount of the loss or damage and may join with any other company or insurers in so doing in cases where the property is also insured elsewhere.

10. On the happening of any damage by fire to any building or place or property or effects within any building or place in respect of which a claim is or may be made under this policy  
6      the company without being deemed wrong-doers may by their authorized officers and servants or others enter into and for a reasonable time remain in possession of such building or place property or effects for a reasonable purpose relating to or in connection with the insurance hereby effected and this policy shall be evidence of leave and license and authority for that purpose.

11. The insured must give notice to the company of any insur-

ance or insurances made elsewhere on the property her-by insured or any part ther-of the particulars of which must be indorsed on the policy and unless such notice be given and endorsement be made the insured will not be entitled to any benefit under this policy.

12th. If at the time of any loss or damage by fire happening to any property hereby insured there be any other subsisting insurance or insurances covering the same property, this company shall not be liable to pay or contribute in respect of such loss or damage more than its ratable proportion of such loss or damage.

13. In all cases where any other subsisting insurance or insurances whether effected by the insured or by any other person on any property her-by insured either exclusively or together with any other property in and subject to the same risk only shall be subject to average, the insurance on such property under this policy shall be subject to average in like manner.

14. If any difference shall at any time arise between the company and the insured or any claimant under this policy as to the amount of any loss or damage by fire and no fraud be alleged, every such difference as and when the same arises shall be referred to the arbitration and decision of two indifferent persons, one to be chosen by the party claiming and the other by the company, or in case of disagreement between them then of an umpire to be chosen by the arbitrators before entering on the reference,—provided that if one of the parties fail to name an arbitrator within ninety days after being call-upon by the other party to do so subsequently to furnishing of the proofs and evidence and other matters as stipulated

7 by the foregoing condition numero 6—then in such case shall the other party be at liberty to choose both arbitrators who shall agree upon an umpire before entering upon the evidence reference—and the cost of the reference shall be in the discretion of the arbitrators or umpire as the case may be who shall award by whom and in what manner the same shall be paid, and the decision of the arbitrators or umpire as the case may be shall be final and binding on all parties and this condition shall be deemed and taken to be an agreement to refer as aforesaid. And it is hereby expressly stipulated and declared that the obtaining of an award by such arbitrators or umpire as the case may be shall be a condition precedent to the liability or obligation of the company to pay or satisfy any claim under this policy for loss or damage in respect of which any such difference may have arisen and to the enforcement of any such claim.

15. In all cases where this policy is void or ceases to be in force under any of the foregoing conditions all moneys paid to the company in respect thereof will be forfeited.

16. The directors of the company shall not be sued nor made personally responsible for this insurance until the funds of the company are first exhausted, and the agents shall in no case be responsible either on account of any legal or any other investigation which they may in find it necessary to institute for the satisfaction of the com-

pany, nor can their personal property be attached on account of any alleged loss by the insured.

17. If in any case the company shall be unable to reinstate or repair the building because of any provisions in the acts in force for regulatinf the alignment of streets or the erection of buildings the company shall in every such case only be liable to pay such sum as would be requisite to reinstate or repair such buildings if same could lawfully be reinstated to their former condition.

18. It is hereby declared and agreed that if the property covered by this policy shall at the breaking out of any fire be collectively of greater value than the sum insured thereon, then this com-  
 8 pany shall pay or make good such a proportion only of the loss or dam-ge as the sum so insured shall bear to the whole value of the said property at the time when such fire shall happen.

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The plaintiff avers that the stock insured and the insurance thereon were transferred with the consent and indorsement of the defendant to him on the 19th January 1885.

And plaintiff avers that at the time of the making of the said policy and from thence until the happening of the loss and damage hereinafter mentioned he had an interest in the said property and since said transfer to the amount of the said sum so by the defendant insured thereon as aforesaid.

And the plaintiff further avers that on the 7th of February 1885, the said property was consumed and destroyed by fire, whereby the plaintiff then and there sustained loss and dam-ge on the said property to the amount of the sum last aforesaid, which said loss and damage did not happen by means of any invasion, foreign enemy, rebellion, insurrection, riot, civil commotion military or usurped power, or martial law, earthquake, hurricane, spontaneous fermentation or heating, application of process by fire heat or explosion.

And the plaintiff further avers that forthwith after the happening of the said loss and damage he gave notice thereof to the defendant and as soon thereafter as possible delivered to the defendant as particular an account of the said loss and damage as the nature of the case would admit, and the plaintiff further avers that there was not at or since the time of making the said policy any other insurance on the said property except as stated in the policy and the said building was not at or since that time appropriated applied or used to and for the purpose of carr-ing on or exercising therein any trade business or vocation denominated hazardous or extra hazardous or included in special rates.

Nevertheless although the plaintiff has kept and performed all things in the said policy mentioned on his part to be kept and performed, the defendant has not yet paid to the plaintiff the said

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amount of the loss and damage aforesaid or any part thereof but refuses to do so to the damage of the plaintiff of 10,000.00 dollars and therefore he brings this suit.

C. M. BOERMAN,  
P't't's Attorney.

U. S. OF AMERICA, } ss:  
District of Porto Rico, }

Federico Amamdeo sworn says that the foregoing declaration is true in substance and fact.

FEDERICO AMADEO.

Sworn to before me this 11th day of April 1903.

A. AGUAYO, D. C.

In the United States District Court for the District of Porto Rico.

FEDERICO AMADEO  
against

THE ROYAL INSURANCE COMPANY OF LIVERPOOL.

} No. 145.

Federico Amadeo, a citizen and resident of Porto Rico by his attorney Charles M. Boerman complain- of the Royal Insurance Company of Liverpool, a corporation organized under and by the laws of the United Kingdom of Great Britain and Ireland, defendant of a plea of trespass on the case on promises: For that whereas the defendant on the 26th July 1884 made its policy of insurance and delivered the same to the plaintiff and for the consideration therein expressed to it paid by the plaintiff, promised the plaintiff in the terms of the said policy and the condition thereto annexed, which said policy and conditions here follow in these words and figures to wit:

This policy of insurance witnesseth that Federico Amadeo Esq. merchant of Quebrada Arena, Maunabo, P. R. hereinafter called the insured, having paid to the undersigned as authorized agents of the Royal Insurance Company, hereinafter called the company the sum of 81 dollars 25 cent- currency for insuring against loss and damage by fire as hereinafter mentioned, the property hereinafter described in the sum or several sums following to wit:

\$6,500.00 on two buildings located in the sugar estate Quebrada Arenas, in the parish of same name of Maunabo, and the contents of both, property of the insured as under:

\$2,000.00 on a house timber built and shingle roofed, serving as dry-good- and provision store No. 1 of plan in possession of this agency. 1 1/4 %

10 \$3000.00 on the stock of dry goods and provisions contained in the aforesaid building.



\$800 on a house built of timber and roofed with galvanized iron, 17 feet distant from the preceding and serving as a *sotro* house for provisions (No. 2 of plan) \* \* \* 1½%.

\$700 on the stock of goods stored in the last mentioned building.

\$6500—B. A. small stock of kerosene is kept on the premises.

The company hereby agree with the insured (but subject to the conditions on the back thereof which are to be taken as a part of this policy) that if the property above described or any part thereof shall be destroyed or damaged by fire at any time between the 26th day of July 1884 and four o'clock in the afternoon of the 26th day of July, 1885 the company will out of their capital stock and funds make good or pay to the insured the value of the property so destroyed or the amount of such damage thereto to the amount not exceeding in respect of each or any of the several matters above specified the sum set opposite thereto respectively, and not exceeding in the whole the sum of 6,500.00 dollars currency and also not exceeding in any case the amount of the insurable interest therein of the insured at the time of the happening of such fire. In witness whereof, we, two of the directors of the said company by their authorized agents have hereunto set our hands and have caused the common seal of said company to be hereunto affixed dated at Porto Rico this 26th day of July in the year of our Lord 1884, and issued there.

R. BROCKBANK,  
E. W. RAYNER,

Directors,

By Their Attorneys, FEDERSEN, WILLINK & CO.,

Agents to the company.

The conditions referred to in this policy are as follows :

1. Any material misdescription of any of the property proposed to be hereby insured or of any building or place in which property to be so insured is contained or any omission to state the existence of any hazardous trade or of any apparatus in or by which heat is produced other than grates in common fire places herein and any misstatement of or omission to state any fact *any fact* material to be known for estimating the risk whether at the time of effecting the insurance or afterwards, renders this policy void as to the property affected by such misdescription misstatement or omission respectively.

2. If after the risk has been undertaken by the company anything whereby the risk is increased be done in or upon property hereby insured or to upon or in any building or place in which property hereby insured is contained, or if any property hereby insured is removed from the building or place in which it is herein described as being contained or if any addition to the risk arise from any other cause whatsoever without in each and every of such cases the assent or sanction of the company signified by indorsement thereon

or if the insured shall refuse or neglect to pay any further premium which may be demanded in consequence of any increase of risk, the insurance as to the property thereby effected ceases immediately thereupon to attach. And if by reason of such alteration or addition or from any cause whatever the company or its agents shall desire to terminate the insurance affected by this policy it shall be lawful for the company or its agents so to do by notice to the insured or his representative and to require this policy to be given up for the purpose of being cancelled, provided that in any such case the company shall refund to the insured a rateable proportion for the unexpired time thereof of the premium received for the insurance.

3. This policy does not cover property held in trust or on commission unless expressly described as such, nor china glass, looking glasses, jewels glass clocks, watches, trinkets, medals curiosities manuscripts, prints painting drawings sculptures musical mathematical and philosophical instruments, patterns models and moulds unless specially mentioned in the policy, nor deeds, bonds, bills of exchange promissory notes, money security for money stamps and books of account, nor gun powder, nor loss or damage by fire happening during the existence of any invasion foreign enemy rebellion insurrection riot, civil commotion military or usurped power or martial law within the country or locality in which the property insured is situated unless proof be made to the satisfaction of the directors that such loss or damage was not occasioned by or connected with but occurred from a cause or causes independent of the existence of such invasion, foreign enemy rebellion, insurrection, riot civil commotion military or usurped power or martial law. And this policy does not cover loss or damage occasioned by or through any earthquake or hurricane or by or through the spontaneous fermentation or heating of the subject insured, nor goods destroyed or damaged while undergoing any process by which the application of fire heat is necessary, nor loss or damage by explosion except loss or damage to a building or property contained therein caused by explosion of gas in such building not being a building in which gas is manufactured.

4. No insurance proposed to the company is to be considered in force until the premium be actually paid. No receipts for any premiums of insurance shall be valid or available for any purpose whatever except as are printed and issued from the company's office and signed by one of the clerks or agents of the office and impressed with the seal of the company, and any condition or proviso contained in endorsed upon or referred to in any such receipt shall be taken as part of this policy.

5. This policy ceases to be in force as to any property hereby insured which shall pass from the insured to any other person otherwise than by will or operation of law unless notice thereof be given to the company and the subsistence of the insurance in favor of

such other person be declared by a memorandum endorsed thereon by or in behalf of the company.

6. On the happening of any loss or damage by fire to any other property hereby insured the insured must forthwith give notice in writing thereof to the company and within fifteen days at latest deliver to the company as particular an account as may be reasonably practicable of the several articles or matters damage- or destroyed by fire and also of all other articles and matters insured by this company policy with the estimated value of each of them respectively having regard to the several values at the time of the fire, and also of the nature and amount of the loss or damage occasioned to each or any such article or matter, and of the interest of the insured therein, and in support thereof give all such vouchers proffs and explanations and other evidence as may be reasonably required by or on behalf of the company together with if

13 required a statutory declaration of the truth of the account, and in default thereof no claim in respect of such loss or damage shall be payable or sustainable unless and until such notice, account proof and explanations or evidence respectively shall have been given or produced as aforesaid, and such statutory declaration if required shall have been made.

7. No profit or advantage of any kind is to be included in any claim for loss or damage under this policy and if the claim be in any respect fraudulent or if any false statutory declaration be made or used in support thereof, of the fire be occasioned by or through the procurement or with the knowledge or connivance of the insured, all benefit under this policy is forfeited.

8. In case of damage by the removal of property to escape conflagration this company will contribute thereto in the proportion the insured hereby shall bear to the whole value of such property before removal, but the company shall not be held liable for property stolen.

9. The company may if they think fit at their option reinstate or replace the property damage- or destroyed instead of paying the amount of the loss or damage and may join with any other company or insurers in so doing in cases where the property is also insured el-where.

10. On the happening of any damage by fire to any building or place or property or effects within any building or place in respect of which a claim is or may be made under this policy the company without being deemed wrong doers may by their authorized officers and servants or others enter into and for a reasonable time remain in possession of such building or place property or effects for all reasonable purposes relating to or in connection with the insurance hereby effected and this policy shall be evidence of leave and license and authority for that purpose.

11. The insured must give notice to the company of any insurance or insurances made elsewhere on the property hereby insured or any part thereof, the particulars of which must be endorsed on

the policy and unless such notice be given and endorsement be made the insured will not be entitled to any benefit under this policy.

12. If at the time of any loss or damage by fire happening to any property hereby insured there be any other subsisting insurance or insurances whether effected by the insured or by any other person covering the same property, this company shall not be liable to pay or contribute in respect of such loss or damage more than its rateable proportion of such loss or damage.

13. In all cases where any other subsisting insurance or insurances whether effected by the insured or by any other person on any property hereby insured either exclusively or together with any other property in and subject to the same risk only shall be subject to average, the insurance on such property under this policy shall be subject to average in like manner.

14. If any difference shall at any time arise between the company and the insured or any claimant under this policy as to the amount of any loss or damage by fire and no fraud be alleged, every such difference as and when the same arises shall be referred to the arbitration and decision of two indifferent persons, one to be chosen by the party claiming and the other by the company, or in case of disagreement between them then of an umpire to be chosen by the arbitrators before entering on the reference—provided if one of the parties fail to name an arbitrator within ninety days after being called upon by the other party to do so subsequently to furnishing of the proofs and evidence and other matters as stipulated by the foregoing condition numero 6—then in such case shall the other party be at liberty to chose both arbitrators who shall agree upon an umpire before entering upon the evidence reference—and the costs of the reference shall be in the direction of the arbitrators or umpire as the case may be who shall award by whom and in what manner the same shall be paid, and the decision of the arbitrators or umpire as the case may be shall be final and binding on all parties and these conditions shall be deemed and taken to be an agreement to refer as aforesaid. And it is hereby expressly stipulated and declared that the obtaining of an award by such arbitrators or umpire as the case may be shall be a condition precedent to the liability or obligation of the company to pay or satisfy any claim under this policy for loss or damage in respect of which any such difference may have arisen and to the enforcement of any such claim.

15. In all cases where this policy is void or ceases to be in force under any of the foregoing conditions all moneys paid to the company in respect thereof will be forfeited.

16. The directors of the company shall not be sued or made personally responsible for this insurance until the funds of the company are first exhausted, and the agents shall in no case be responsible either on account of any legal or any other investigation which they may find it necessary to institute for the satisfaction of the company

nor can their personal property be attached on account of any alleged loss by the insured.

17. If in any case the company will be unable to reinstate or repair the buildings because of any provisions in the acts in force for regulating the alignment of streets or the erection of buildings the company shall in every such case only be liable to pay such a sum as would be required to reinstate or repair such building if the same could lawfully be reinstated to their former condition.

18. It is hereby declared and agreed that if the property covered by this policy shall at the breaking out of any fire be collectively of greater value than the sum insured thereon, then this company shall pay or make good such a proportion only of the loss or damage as the sum so insured shall bear to the whole value of the said property at the time when such fire shall happen. \* \* \*

And the plaintiff avers that at the time of the making of the said policy and from thence until the happening of the loss and damage hereinafter mentioned he had an interest in the said property to the amount of the said sum so by the defendant insured thereon as aforesaid.

And the plaintiff further avers that on the 7th day of February 1885 the said property was consumed and destroyed by fire, whereby the plaintiff then and there sustained loss and damage on the said property to the amount of the sum last aforesaid, which said loss and damage did not happen by means of any invasion — foreign enemy, rebellion insurrection riot civil commotion, military or usurped power or martial law earthquake hurricane spontaneous fermentation or heating, application of process of fire heat or explosion.

16 And the plaintiff further avers that forthwith after the happening of the said loss and damage he gave notice thereof to the defendant and as soon thereafter as possible delivered to the defendant as particular an account of the said loss and damage as the nature of the case would admit. And the plaintiff further avers that there was not at or since the time of making the said policy any other insurance on the said property and that the said building was not at of since that time appropriated applied or used to and for the purpose of carrying on or exercising therein any trade business or vocation denominated hazardous or extra-hazardous or included in special rates.

Nevertheless although the plaintiff has kept and performed all things in the said policy mentioned on his part to be kept and performed, the defendant has not yet paid to the plaintiff the said amount of the loss and damage aforesaid or any part thereof but refuses so to do. To the damage of the plaintiff of 30,000.00 dollars and therefore he brings his suit.

C. M. BOERMAN,  
Plaintiff's Attorney.

U. S. OF AMERICA, } ss :  
District of Porto Rico, }

Federico Amadeo sworn says that the foregoing declaration is true in substance and fact.

FEDERICO AMADEO.

Sworn to before me this 11th day of April 1903.

A. AGUAYO, D. C.

Præcipe for Summons.

UNITED STATES OF AMERICA, } ss :  
District of Porto Rico, }

FEDERICO AMADEO

vs.

ROYAL INSURANCE COMPANY OF LIVERPOOL.

} No. 144.

Clerk of said court :

Please issue summons in the above entitled case returnable to May term.

C. M. BOERMAN,  
Attorney for Palintiff.

UNITED STATES OF AMERICA, } ss :  
District of Porto Rico, }

FEDERICO AMADEO

vs.

ROYAL INSURANCE CO. OF LIVERPOOL.

} No. 145.

Clerk of said court :

Please issue summons in the above entitled case returnable to May term.

C. M. BOERMAN,  
Attorney for Plaintiff.

Thereupon there was issued out of the clerk's office of this court a writ of summons in each of *this* causes directed to the marshal of this court and against the defendant herein, which said summons are as follows, to wit :

In the District Court of the United States for Porto Rico.

|                                       |   |          |
|---------------------------------------|---|----------|
| FEDERICO AMADEO                       | } | No. 144. |
| vs.                                   |   |          |
| ROYAL INSURANCE COMPANY OF LIVERPOOL. |   |          |

Summons.

UNITED STATES OF AMERICA, } ss:  
 District of Porto Rico,

The President of the United States of America to the marshal of the district of Porto Rico, Greeting :

You are hereby commanded to summon the Royal Insurance Company of Liverpool if it can be found in your district to be and appear before the United States district court for the district of Porto Rico at the court rooms of said court in the city of Ponce on the 11th day of May 1903, then and there to answer unto Federico Amadeo on the action assumptsit damages 10,000.00 and have you then and there this writ.

Failing to so appear judgment may be entered against the said defendant by default.

Witness : the Honorable Wm. H. Holt judge of the district court of the United States for Porto Rico, this 21st day of April A. D. 1903 and of the Independence of the United States of America the 127th.

Attest :

RICARDO NADAL, Clerk,  
 By A. AGUAYO, Deputy.

In the District Court of the United States for Porto Rico.

|   |   |          |
|---|---|----------|
| FEDERICO AMADEO                           | } | No. 145. |
| vs.                                       |   |          |
| THE ROYAL INSURANCE COMPANY OF LIVERPOOL. |   |          |

Summons.

UNITED STATES OF AMERICA, } ss:  
 District of Porto Rico,

18 The President of the United States of America to the marshal of the district of Porto Rico, Greeting :

You are hereby commanded to summon the Royal Insurance Company of Liverpool if it can be found in your district to be and appear before the United States district court for the district of Porto Rico at the court rooms of said court in the city of Ponce on the 11th



day of May, 1903, then and there to answer unto Federico Amadeo on an action assumpsit damages 30,000.00 and have you then and there this writ. Failing to so appear judgment may be entered against the said defendant by default.

Witness: the Honorable Wm. H. Holt, judge of the district court of the United States for Porto Rico, this 21st day of April A. D. 1903 and of the Independence of the United States of America the 127th.

Attest:

RICARDO NADAL, Clerk,  
By A. AGUAYO, Deputy.

And afterwards to wit: on the 23rd day of April, 1903, came the marshal of this district to whom the said writs were in form afore-said direct-d and returned the same into the clerk's office of said court with his proceedings endorsed thereon as follows, to wit:

#### Return on Service of Writ.

UNITED STATES OF AMERICA, }  
The District of Porto Rico, } ss:

I hereby certify and return that I served the annexed writ on the therein named The Royal Insurance Company of Liverpool by handing to and leaving a true and correct copy thereof with Nicasio Arzuaga a member of the firm of Sobrinos de Esquiga chief agents within the district of the Royal Insurance Company of Liverpool personally at San Juan in said district on the 23rd day of April A. D., 1903.

E. S. WILSON,  
U. S. Marshal.  
J. L. MILLER, Deputy.

#### Return on Service of Writ.

UNITED STATES OF AMERICA, }  
The District of Porto Rico. }

I hereby certify and return that I serve the annexed writ on the therein named The Royal Insurance Company of Liverpool by handing to and leaving a true and correct copy thereof with Nicasio Arzuaga a member of the firm of Sobrinos de Esquiga chief agents within the district of the Royal Insurance Co. of Liverpool personally at San Juan in said district on the 23rd day of April A. D., 1903.

E. S. WILSON,  
U. S. Marshal.  
J. L. MILLER, Deputy.

And afterwards to wit: on the 11th day of May in the year last aforesaid 1903, came the defendant by its attorneys and filed in the clerk's office of this court a demurrer to the declaration in the said cases which said demurrer is as follows, to wit:

In the District Court of the United States for Porto Rico, Sitting at Ponce.

|                          |   |                      |
|--------------------------|---|----------------------|
| FEDERICO AMADEO          | } | Common Law. No. 144. |
| VS.                      |   |                      |
| ROYAL INSURANCE COMPANY. |   |                      |

Demurrer to the Declaration.

Now comes defendant above named by its attorneys Dexter and Hord and demurs to the declaration herein filed,

1st. For the reason that it does not state a cause of action;

Second. Because upon the face thereof and by the admission of the plaintiff contained therein, it appears that the said alleged cause of action is prescribed and barred by the statute of limitations and the period of prescription as provided in the civil and commercial codes.

DEXTER AND HORD,  
Attorneys for Defendant.

In the District Court of the United States for Porto Rico, Sitting at Ponce.

|                          |   |                      |
|--------------------------|---|----------------------|
| FEDERICO AMADEO          | } | Common Law. No. 145. |
| VS.                      |   |                      |
| ROYAL INSURANCE COMPANY. |   |                      |

Demurrer to Declaration.

Now comes the defendant above named by its attorneys Dexter and Hord and demurs to the declaration herein filed,

First. For the reason that it does not states a cause of action.

Second. Because on the face thereof and by the admission of the plaintiff contained therein, it appears that the said alleged caused of action is prescribed and tarred by the statute of limitations and the period of prescription as provided in the civil and commercial codes.

DEXTER AND HORD,  
Attorneys for Defendant.

FEDERICO AMADEO  
vs.  
THE ROYAL INSURANCE COMPANY. } No. 144.

Now comes the defendant herein by its attorneys Dexter and Hord and files a demurrer to the declaration herein and the same being heard is overruled and thereupon defendant files a plea.

FEDERICO AMADEO  
vs.  
ROYAL INSURANCE COMPANY. } No. 145.

Now comes the defendant herein by its attorneys Dexter and Hord and files a demurrer to the declaration herein the same being heard is overruled and thereupon the defendant files a plea.

And the said plea filed by the defendant in said causes is as follows to wit:

In the United States District Court for Porto Rico, Sitting at Ponce.

FEDERICO AMADEO  
vs.  
THE ROYAL INSURANCE COMPANY. } Common Law. No. 144.

Plea.

Now comes the defendant above named, by its attorneys Dexter and Hord, and for its various pleas to the declaration herein filed, says:

First. Defendant never promised and is not indebted to plaintiff in manner and form as in said declaration alleged; and of this it puts itself upon the country.

Second. For a second and further plea to the said declaration, defendant says that plaintiff ought not to have and recover herein for the reason that the alleged cause of action did not accrue within fifteen years before this suit; and of this it puts itself upon the country.

Third. For third and further plea to the said declaration, defendant says that plaintiff ought not to have and recover herein for the reason that plaintiff has no interest in the proceeds of the policy sued — nor did he have at the time of the institution of this suit, the said policy and the proceeds thereof having been transferred, sold and assigned by him by notarial document on — — 188—.

Fourth. For a fourth and further plea to said declaration defendant says that plaintiff ought not to recover herein for the reason that there has been no such damage or loss as set forth in said declaration, and this defendant is ready to verify.

Fifth. For a fifth and further plea herein defendant says that plaintiff ought not to recover herein for the reason that within fifteen days after the fire described in said declaration there was not delivered to defendant a particular account as was reasonably practicable of the several articles or property damaged or destroyed by fire, and of all other articles and matters insured under the said policy, with the estimated value of each of them respectively, having regard to their several values at the time of the fire; also stating the nature and amount of the loss or damage occasioned to each and every such article or matter, and of the interest of the insured therein, and in support thereof such vouchers, proofs and explanations and other evidence as was required by and on behalf of defendant, together with a statutory declaration of the truth of all the same, although all of said settlements, proofs declarations and explanations were demanded by the defendant; and no such proofs, claims, settlements or declarations have at any time been delivered to defendant; and of this defendant puts itself upon the country.

Sixth. For a sixth and further plea to the declaration herein defendant says that plaintiff ought not to recover for the reason that immediately after the fire plaintiff made a claim in general terms for the full value of the said policy but without specifying the articles or giving in detail the information and proofs demanded of plaintiff by defendant as set forth in the fifth plea next above pleaded; but said claim was made for the full amount of said policy, and was fraudulent in this to wit that the value of said property insured by the policy described in the declaration herein at the time of said insurance was not the sum specified in said policy, but that said value was much less than the amount contained  
22 in said policy, and that this insurance, sued on herein, was obtained by the false and fraudulent representations of plaintiff and without the knowledge of the defendant as to the real value of the said property so insured. And further the said claim for the total amount of the said policy so made as aforesaid was false and fraudulent for the reason that at the time of said fire the property so described in the said policy sued on herein was greatly less the sum so claimed as aforesaid by the plaintiff; and this defendant is ready to verify.

Seventh. For seventh and further plea defendant says that plaintiff ought not to have and recover herein for the reason that the said fire as described in the declaration herein, and the destruction and loss of the property covered by the policy, sued on herein was caused and occasioned by the procurement, means, designs and voluntary act of the plaintiff, who caused the said property to be set fire for the fraudulent purpose of recovering from this defendant the amount of the said policy; and this defendant is ready to verify.

DEXTER & HORD,  
Att's for Def't.

Miguel L. Arsuaaga being duly sworn, upon his oath says, that he is one of the agents of the defendant company in the above entitled cause, that he has read the foregoing plea, and that the facts stated therein are true to the best of his knowledge and belief.

MIGUEL ARSUAGA.

Sworn to and subscribed before me this May 11th 1903.

A. AGUAYO,  
D. C. U. S. Court.

In the United States District Court for Porto Rico, Sitting at Ponce.

|                          |   |                      |
|--------------------------|---|----------------------|
| FEDERICO AMADDO          | } | Common Law. No. 145. |
| vs.                      |   |                      |
| ROYAL INSURANCE COMPANY. |   |                      |

Plea.

Now comes defendant above named, by its attorneys Dexter & Hord, and for its various pleas to the declaration herein filed, says:

First. Defendant never promised and is not indebted to plaintiff in manner and form as in said declaration alleged; and of this it puts itself upon the country.

23 Second. For a second and further plea to the said declaration, defendant says that plaintiff ought not to have and recover herein for the reason that the alleged cause of action did not accrue within fifteen years before this suit; and of this it puts itself upon the country.

Third. For a third and further plea to the said declaration defendant says that the plaintiff ought not to have and recover herein for the reason that plaintiff has no interest in the proceeds of the policy sued on, nor did he have at the time of the institution of this suit, the said policy and the proceeds thereof having been transferred, sold and assigned by him by notarial document on — 188—.

Fourth. For a fourth and further plea to said declaration defendant says that plaintiff ought not to recover herein for the reason that there has been no such damage or loss as set forth in the said declaration, and this defendant is ready to verify.

Fifth. For a fifth and further plea herein defendant says that plaintiff ought not to recover herein for the reason that within fifteen days after the fire described in said declaration there was not delivered to defendant a particular account as was reasonable practicable for the several articles or property damaged or destroyed by fire, and of all other articles and matters insured under the said policy, with the estimated value of each of them respectively, having regard to their several values at the time of the fire; also stating the nature and amount of the loss or damage occasioned to each and any such article or matter, and of the interest of the insured therein, and

in support thereof such vouchers, proofs and explanations and other evidence as was required by and on behalf of defendant, together with with a statutory declaration of the truth of all of the same, although all of said settlements, proofs declarations and explanations were demanded by the defendant; and no such proofs, claims, settlements or declarations have at any time been delivered to defendant; and of this defendant puts itself upon the country.

Sixth. For a sixth and further plea to the declaration herein defendant says that plaintiff ought not to recover for the reason that immediately after the fire plaintiff made a claim in general terms for the full value of the said policy but without specifying the articles or giving in detail the information and proofs demanded of plaintiff by defendant as set forth in the fifth plea next above pleaded; but said claim was made for the full amount of said policy, and was fraudulent to this, to wit: That the value of said property insured by the policy described in the declaration herein at the time of the said insurance was not the sum specified in said policy, but that said value was much less than the amount contained in said policy, and that this insurance, sued on herein, was obtained by the false and fraudulent representations of plaintiff and without the knowledge of the defendant as to the real value of the said property so insured. And further the said claim for the total amount of the said policy so made as aforesaid was false and fraudulent for the reason that at the time of said fire the property so described in the said policy sued on herein was greatly less the said sum so claimed as aforesaid by plaintiff; and this defendant is ready to verify.

Seventh. For seventh and further plea defendant says that plaintiff ought not to have or recover herein for the reason that the said fire as described in the declaration herein, and the destruction and loss of the property covered by the policy sued on herein was caused and occasioned by the procurement, means, designs and voluntary act of the plaintiff, who caused the said property to be set fire for the fraudulent purpose of recovering from this defendant the amount of the said policy; and this defendant is ready to verify.

DEXTER & HORD,  
Attorneys for Def't.

Miguel Arsuaga being duly sworn upon his oath says, that he is one of the agents of the defendant company in the above entitled case that he has read the foregoing plea, and that the facts stated therein are true to the best of his knowledge and belief.

MIGUEL L. ARSUAGA.

Sworn to and subscribed before me this 11th May 1903.

A. AGUAYO,  
D'ty Clerk U. S. Court.

And afterwards to wit: on the 12th day of May in the year last aforesaid came the plaintiff by his attorney and filed in the clerk's office of said court his replication in these causes, which said replications are as follows to wit:

25 United States District Court for Porto Rico.

FEDERICO AMADEO  
vs.  
ROYAL INSURANCE CO. } No. 144.

1st. And the plaintiff says that as to the first plea of the defendant whereof it puts itself upon the country the plaintiff does the same.

2. And as to the second and third pleas of the defendant the plaintiff says that the same and the matters therein pleaded in manner and form are not sufficient in law to bar him from having his aforesaid action and that he is not bound by law to answer the same, and this he is ready to verify, wherefore for want of sufficient plea in this behalf the plaintiff prays judgment.

3. As to the fourth plea the plaintiff puts himself upon the country.

4. As to the fifth plea plaintiff states that all the notices proofs and other papers required by the policy to be delivered within fifteen days were so delivered and this plaintiff prays may be inquired by the country.

5. As to the sixth plea plaintiff avers that there was no fraud intended or committed neither in the policy nor in the proofs or claim, and this he prays may be inquired by the country.

6. As to the seventh plea plaintiff says that the fire was not of incendiary origin or by his negligence and of this he puts himself upon the country.

C. M. BOERMAN,  
Plaintiff's Attorney.

UNITED STATES OF AMERICA, } ss:  
District of Porto Rico,

Federico Amadeo on oath says that the foregoing pleas are true in substance and fact.

FEDERICO AMADEO.

Sworn to before me this 12th May 1903.

A. AGUAYO, D. C.



United States District Court for Porto Rico.

FEDERICO AMADEO  
vs.  
ROYAL INSURANCE COMPANY. } Common Law. No. 145.

1. And the plaintiff says that as to the first plea of the defendant whereof it puts itself upon the country the plaintiff does the same.

2. As to the second and third pleas of the defendant the plaintiff says that the same and the matters therein pleaded in manner and form are not sufficient in law to bar him from having his aforesaid action and that he is not bound by law to answer the same, and this he is ready to verify, wherefore for want of a sufficient plea in this behalf the plaintiff prays judgment.

3. As to the fourth plea the plaintiff puts itself upon the country.

4. As to the fifth plea plaintiff states that all the notices proofs and other papers required by the policy to be delivered within fifteen days were so delivered and this plaintiff prays may be inquired by the country.

5. As to the sixth plea plaintiff avers that there was no fraud intended or committed neither in the policy nor in the proofs or claim, and this he prays may be inquired by the country.

6. As to the seventh plea plaintiff says that the fire was not of incendiary origin or by his negligence and of this he puts himself upon the country.

C. M. BOERMAN,  
Plaintiff's Attorney.

UNITED STATES OF AMERICA, } ss :  
District of Porto Rico,

Federico Amadeo on oath says that the foregoing pleas are true in substance and fact.

FEDERICO AMADEO.

Sworn to before me this 12th May, 1903.

A. AGUAYO, D. C.

And the same day and year last aforesaid came the defendant by its attorneys and filed in the clerk's office of said court a motion to strike parts of plaintiff replication in said cause and which said motion is as follows to wit:

United States District Court of Porto Rico, Sitting at Ponce.

FEDERICO AMADEO  
vs.  
ROYAL INSURANCE COMPANY. } C. L. No. 144.

Motion to Strike.

Now comes the defendant herein by its attorneys Dexter and Hord  
and moves the court to strike from the replication herein the  
27 following paragraphs or part thereof, to wit :

Those paragraphs or parts of the said replication which purport  
to be a replication to the fifth, sixth and seventh pleas of the de-  
fendant herein for the reason that the same are argumentative,  
trivial and not good pleading.

DEXTER AND HORD,  
Attorneys for Defendant.

United States District Court for Port Rico, Sitting at Ponce.

FEDERICO AMADEO  
vs.  
ROYAL INSURANCE COMPANY. } C. L. No. 145.

Motion to Strike.

Now comes the defendant herein by its attorneys Dexter and Hord  
and moves the court to strike from the replication herein the follow-  
ing paragraphs or parts thereof, to wit :

Those paragraphs or parts of the said replication that purport to  
be a replication to the fifth, sixth and seventh pleas of the defendant  
herein for the reason that the same are argumentative, trivial and  
not good pleading.

DEXTER AND HORD,  
Attorneys for Defendant.

Thereupon the following entries were made upon the journal of  
said court in said causes, to wit :

FEDERICO AMADEO  
vs.  
ROYAL INSURANCE COMPANY. } No. 144.

Now comes the defendant herein by its attorneys Dexter and  
Hord and files a motion to strike parts of plaintiff's replication and  
the same being heard is submitted.

FEDERICO AMADEO, ETC., VS.

FEDERICO AMADEO  
vs.  
THE ROYAL INSURANCE COMPANY. } No. 145.

Now comes the defendant herein by its attorneys Dexter and Hord and files a motion to strike parts of plaintiff's replication and the same being heard is submitted.

28 And afterwards to wit: on the 18th day of May in the year aforesaid 1903 the following entries were made upon the journal of said court in said causes, to wit:

FEDERICO AMADEO  
vs.  
THE ROYAL INSURANCE CO. } No. 144.

Now comes the plaintiff herein by his attorney C. M. Boerman Esq. and tenders an amended complaint to which the defendant objects and the same being allowed to be filed, defendant excepts.

FEDERICO AMADEO  
vs.  
THE ROYAL INSURANCE COMPANY. } No. 145.

Now comes the plaintiff herein by his attorney C. M. Boerman Esq. and tenders an amended complaint to which the defendant objects and the same being allowed to be filed, defendant excepts.

And said amended complaint filed by the plaintiff in these causes are as follows, to wit:

United States District Court for Porto Rico.

FEDERICO AMADEO  
against  
THE ROYAL INSURANCE COMPANY. } No. 144.

The plaintiff by leave of court amends his declaration as follows: In the title of the case after the name of the plaintiff add the words: "for the use and jointly with the Pastor Marquez Company in liquidation."

In the body of the declaration at the end of it add the following paragraph:

"And the plaintiff avers that on or about the month of August 1885, the said policy was assigned to the Pastor Marquez Company in liquidation, of which Pedro Salazar is liquidator."

C. M. BOERMAN,  
Plaintiff's Attorney.

Federico Amadeo on oath says that the foregoing amendment to the declaration is true.

FEDERICO AMADEO.

29

Sworn to before me this 18th day of May 1903.

RICARDO NADAL, Clerk,  
By A. AGUAYO,  
Deputy Clerk.

United States District Court for Porto Rico.

FEDERICO AMEDEO  
against  
THE ROYAL INSURANCE COMPANY. } Com. Law. No. 145.

The plaintiff by leave of court amends his declaration as follows:  
In the title of the case after the name of the plaintiff add the words "for the use of and jointly with the Pastor Marquez Company in liquidation."

In the body of the declaration at the end of it add the following paragraph:

"And the plaintiff avers that on or about the month of August 1885 the said policy was assigned to the Pastor Marquez Company in liquidation of which Pedro Salazar is liquidator.

C. M. BOERMAN,  
Plaintiff's Attorney.

Federico Amadeo on oath says that the foregoing amendment to the declaration is true.

FEDERICO AMADEO.

Sworn to before me this 18th day of May 1903.

RICARDO NADAL, Clerk,  
By A. AGUAYO, D. C.

And afterwards to wit: on the 21st day of May on the year last aforesaid the following entries were made upon the journal of said court in said causes, to wit:

FEDERICO AMADEO  
vs.  
ROYAL INSURANCE CO. } No. 144.

Now comes the defendant herein by its attorneys Dexter and Hord and with permission of the court first had withdraws its motion to strike parts of replication and by consent such replication is traversed upon the record.

FEDERICO AMADEO  
vs.  
ROYAL INSURANCE COMPANY. } No. 145.

30

Now comes the defendant herein by its attorneys Dexter and Hord and with permission of the court first had withdraws its motion to strike part of replication and by consent said replication is traversed upon the record.

And afterwards to wit : on the 25th day of May in the year last aforesaid, came the defendant by its attorneys and filed in the clerk's office of the court aforesaid a motion to consolidate these causes, which said motion is as follows, to wit :

United States District Court for Porto Rico, Sitting at Ponce.

|                             |   |          |
|-----------------------------|---|----------|
| ANTONIO J. AMADEO           | } | No. 141. |
| vs.                         |   |          |
| NORTHERN ASSURANCE COMPANY. |   |          |

|                     |   |          |
|---------------------|---|----------|
| ANTONIO J. AMADEO   | } | No. 142. |
| vs.                 |   |          |
| ROYAL INSURANCE CO. |   |          |

|                     |   |          |
|---------------------|---|----------|
| ANTONIO J. AMADEO   | } | No. 143. |
| vs.                 |   |          |
| ROYAL INSURANCE CO. |   |          |

|                     |   |          |
|---------------------|---|----------|
| FEDERICO AMADEO     | } | No. 144. |
| vs.                 |   |          |
| ROYAL INSURANCE CO. |   |          |

|                     |   |          |
|---------------------|---|----------|
| FEDERICO AMADEO     | } | No. 145. |
| vs.                 |   |          |
| ROYAL INSURANCE CO. |   |          |

#### Motion to Consolidate.

Now comes the defendant in the above numbered and styled causes by their attorneys Dexter and Hord, and moves the court to consolidate the said suits and in support of said motion, represents that the said suits are between the same parties and that the issues therein are the same; that by consolidating said causes great expenses will be saved to the parties and to this court and that otherwise much unnecessary time of the court will be taken and great trouble be had in the procurement of juries to try the same.

DEXTER AND HORD,  
Attorneys for Defendants.

And afterwards, to wit : on the 27th day of May in the year last aforesaid an entry was made upon the journal of said court in said causes, which said entry is as follows, to wit :

31 Jodé ANTONIO AMADEO ET AL. }  
 vs. } No. 142.  
 THE ROYAL INSURANCE COMPANY. }

Jodé ANTONIO AMADEO ET AL. }  
 vs. } No. 143.  
 THE ROYAL INSURANCE COMPANY. }

FEDERICO AMADEO ET AL. }  
 vs. } No. 144.  
 THE ROYAL INSURANCE COMPANY. }

FEDERICO AMADEO ET AL. }  
 vs. } No. 145.  
 THE ROYAL INSURANCE CO. }

The motion to consolidate the above entitled causes is called up heard and sustained to the extent of consolidating cases No. 142 and 143 and also of consolidating cases No. 144 and 145, and cases No. 142 and 143 are to be tried together and 144 and 145 are to be tried together.

And afterwards to wit: on the 12th day of January A. D. 1904, an entry was made upon the journal of said court in said causes, which said entry is as follows, to wit:

FEDERICO AMADEO ET AL. }  
 vs. } No. 144.  
 THE ROYAL INSURANCE COMPANY }

and

FEDERICO AMADEO ET AL. }  
 vs. } No. 145.  
 THE ROYAL INSURANCE COMPANY. }

The demurrer to the second plea filed herein is overruled to which plaintiff- excepts, thereupon plaintiffs filed a replication to the second plea to which the defendant files a demurrer which is sustained and plaintiffs except.

And the additional replication filed by the plaintiffs as aforesaid is as follows, to wit:

United States District Court for Porto Rico.

32 FEDERICO AMADEO ET AL. }  
 vs. } No. 144-145.  
 ROYAL INSURANCE COMPANY. }

And as to the second and third pleas of the defendant above pleaded the plaintiffs say that the same limitation and prescription

therein pleaded was interrupted by extra-judicial demands and this the plaintiffs pray may be inquired into by the country.

Wherefore the plaintiffs pray judgment and their costs, etc.,

C. M. BOERMAN,  
Plaintiffs' Attorney.

Ermelindo Salazar under oath says that the foregoing plea is true in substance and fact.

E. SALAZAR.

Sworn to before me this 12th day of January, 1904.

A. AGUAYO, D. C.

And the demurrer to the replication to the 2nd plea filed herein as aforesaid is as follows, to wit:

United States District Court for Porto Rico, Sitting at Ponce.

|                          |   |          |
|--------------------------|---|----------|
| FEDERICO J. AMADEO       | } | No. 144. |
| VS.                      |   |          |
| ROYAL INSURANCE COMPANY. |   |          |

|                     |   |          |
|---------------------|---|----------|
| FEDERICO J. AMADEO  | } | No. 145. |
| VS.                 |   |          |
| ROYAL INSURANCE CO. |   |          |

Now comes the defendant, by its attorneys of record, and excepting to plaintiffs' replication to defendant's 2nd plea heren, says that the same is insufficient in law. Wherefore, etc.

ROYAL INSURANCE COMPANY,  
By F. H. DEXTER AND  
HENRY F. HORD,  
Its Attorneys of Record.

And afterwards, to wit: on the 15th day of January in the year last aforesaid 1904, an entry was made upon the journal of said court in said causes, which said entry is follows to wit:

|                                 |   |          |   |               |
|---------------------------------|---|----------|---|---------------|
| FEDERICO AMADEO ET AL.          | } | No. 144. | } | Consolidated. |
| VS.                             |   |          |   |               |
| THE ROYAL INSURANCE COMPANY.    |   |          |   |               |
| and                             |   |          |   |               |
| FEDERICO AMADEO ET AL.          | } | No. 145. |   |               |
| VS.                             |   |          |   |               |
| 33 THE ROYAL INSURANCE COMPANY. |   |          |   |               |

Judgment.

On this 15th day of January, 1904, came on the causes for hearing the same having been heretofore consolidated by order of the court,



and both parties being present by their respective attorneys and plaintiffs having heretofore refused to plead further to the second plea, filed herein, by defendant and now failing to offer proofs as to the other issues made and tendered herein, judgment is by the court entered for the defendant. Wherefore, it is by the court ordered and adjudged that the plaintiff- herein, Federico Amadeo for himself and for the use and benefit of the firm of Pastor Marquez and Company, and Pedro Salazar as liquidating partner of the said Pastor Marquez & Company, take nothing by either of said suits and that the defendant go hence without day and recover of and from the said plaintiffs all costs in this behalf incurred or expended for which execution may issue. To all of which plaintiffs by their attorneys then and there in open court excepted.

It is further ordered that plaintiffs have until March 15th, 1904 to file their bill of exceptions herein and that the amount of the appeal bond be fixed at the sum of five hundred dollars for said causes jointly.

On the 14th day of March, 1904 the plaintiffs filed their bill of exceptions which is as follows:

United States District Court for Porto Rico.

|                              |   |                           |
|------------------------------|---|---------------------------|
| FEDERICO AMADEO ET AL.       | } | Common Law. Nos. 144-145. |
| against                      |   |                           |
| THE ROYAL INSURANCE COMPANY. |   |                           |

Bill of Exceptions.

Be it remembered that at a term of the district court of the United States for Porto Rico held in the city of Ponce on the 12th day of January, 1904 a cause therein pending wherein Federico Amadeo and The Pastor Marquez Company were plaintiffs and The Royal Insurance Company of Liverpool was defendant, came on to be heard before the Honorable William H. Holt, judge of the

34     said court, upon the demurrer of the plaintiffs aforesaid to the second plea of the defendant to the declaration, and thereupon the court overruled said demurrer, to which ruling of the court the plaintiffs excepted.

Thereupon the plaintiff having filed a replication to said plea the defendant demurred to said replication, and the court upon hearing the argument on said demurrer sustained the demurrer to the said replication to which ruling of the court the plaintiffs excepted.

This bill may not be necessary to the appeal,—in fact the court so thinks, but counsel desiring, it is approved and signed this March 14, 1904.

WILLIAM H. HOLT, Judge.

And on the 20th day of September, 1904 the plaintiffs filed a petition for a writ of error and assignment of errors in these cases as follows to wit:

Petition for a Writ of Error.

United States District Court for Porto Rico.

FEDERICO AMADEO ET AL. }  
 VS.  
 ROYAL INSURANCE COMPANY. }

The plaintiffs in the above entitled cause feeling themselves aggrieved by the judgment entered on the 15 day of January 1904, come now by their attorney Charles M. Boerman and petition this court for an order allowing said plaintiffs to prosecute a writ of error to the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided.

And your petitioner will ever pray?

C. M. BOERMAN,  
 Attorney for the Plaintiffs.

Assignment of Errors.

United States District Court for Porto Rico.

FEDERICO AMADEO ET AL. }  
 VS.  
 ROYAL INSURANCE COMPANY. }

Come now the plaintiffs in the above entitled cause and file the following assignment of errors upon which they will rely their prosecution of the writ of error in the above entitled case:

35 1. The court erred in overruling the demurrer of the plaintiffs to the second plea of the defendant to the declaration, and by deciding and adjudging that said plea of limitation is a good plea, contrary to the law of Porto Rico.

2. The court erred in sustaining the demurrer of the defendant to the replication of the plaintiffs to said second plea of the defendant, and by deciding and adjudging that there is no interruption of limitation by extrajudicial demand of plaintiffs, contrary to the law of Porto Rico.

3. That the court erred in rendering judgment for the defendant and against the plaintiffs upon the pleadings in said cause and that said judgment is contrary to the law and to the facts as stated in the pleadings in said cause.

Wherefore the said plaintiffs in error pray that the judgment of said court be reversed and such directions be given that full force and efficacy may inure to the plaintiffs by reason of the said pleas of demurrer.

C. M. BOERMAN,  
Attorney for the Plaintiffs.

And on the 21st of September A. D. 1904, the court made the following order: to wit:

In the District Court of the United States for Porto Rico.

FEDERICO AMADEO ET AL. }  
VS.  
ROYAL INSURANCE COMPANY. }

Upon motion of C. M. Boerman, attorney for plaintiff, and upon filing a petition for a writ of error and assignment of errors, it is ordered that a writ of error be and hereby is allowed to have reviewed in the Supreme Court of the United States, the judgment heretofore entered herein.

This at San Juan Porto Rico this twenty first day of September, 1904.

CHAS. F. McKENNA,  
Judge of the District Court of U. S. for Porto Rico.

Appeal Bond. Filed December 20th, 1904.

United States District Court for Porto Rico.

FEDERICO AMACEO and PASTOR MARQUEZ Co. }  
VS.  
ROYAL INSURANCE COMPANY. }

36

Know all men by these presents that we, Pastor Marquez Co., as principal and Lucas Amadeo of Barros and Felipe Salazar of Ponce as sureties are held to the defendant above named The Royal Insurance Company of Liverpool in the sum of five hundred dollars to be paid to the said company or its assigns to which payment well and truly to be made we bind ourselves and each of us jointly and severally and our successors and assigns firmly by these presents.

Sealed with our seals and dated the 30th day of November, 1904.

Whereas the above named plaintiffs have sued out a writ of error to the Supreme Court of the United States to reverse the judgment in the above entitled cause by the United States district court for Porto Rico. Now, therefore the condition of this obligation is such

that if the above named plaintiff should prosecute said writ to effect and answer all costs and damages if they shall fail to make good their plea, then this obligation to be void, otherwise to remain in full virtue and force.

PASTOR MARQUEZ CO.,  
In Liquidation.

E. SALAZAR.  
FELIPE SALAZAR.  
LUCAS AMADEO.

Felipe Salazar and Lucas Amadeo each of them being duly sworn says that he is worth \$2,500.00 over and above his legal liabilities.

LUCAS AMADEO.  
FELIPE SALAZAR.

Sworn to before me this 30 day of November 1904.

A. AGUAYO,  
Deputy Clerk U. S. Court.

Felipe Salazar and Lucas Amadeo the person- who signed as sureties in the foregoing bond, personally appeared before me and acknowledge- the execution of same. This 30th day of November 1904.

H. H. SCOVILLE,  
Clerk U. S. District Court of Porto Rico,  
By A. AGUAYO,  
Deputy Clerk.

Petition and Order. Filed Dec. 30th, 1904.

In the District Court of the United States for Porto Rico.

|    |   |   |                         |
|----|---|---|-------------------------|
| 37 | FEDERICO AMADEO, for the Use of<br>and Jointly With the Pastor<br>Marquez Company, in Liquidation,<br><br>vs.<br>THE ROYAL INSURANCE COMPANY. | } | C. L. Nos. 144 and 145. |
|----|---|---|-------------------------|

Petition.

Chas. M. Boerman, attorney for the plaintiffs and appellants in the above entitled cause, shows to this honorable court that, because of the great distance of Porto Rico from Washington, thirty days is too short for the preparation and transmission of the record of this case, and therefore moves and prays this court to grant sixty days additional within which the said transcript of record may be transmitted to the Supreme Court of the United States.

C. M. BOERMAN,  
Attorney for Plaintiffs.

## Order.

The court hereby orders, upon the foregoing petition, that the time for filing the transcript of record be and hereby is *extended to ninety* days from the date of the issuance of the writ of error.

CHAS. F. McKENNA,  
Judge of the U. S. District for Porto Rico.

In the District Court of the United States for Porto Rico.

I, H. H. Scoville, clerk of said court, do hereby certify, that the foregoing is a true and correct transcript of the record of the causes therein stated on file and of record in this office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Ponce, Porto Rico, this 28th day of February, A. D. 1905.

[Seal United States District Court for the District of Porto Rico.]

H. H. SCOVILLE,  
Clerk U. S. District Court of Porto Rico,  
By A. AGUAYO,  
Deputy Clerk.

38 [Endorsed:] No- 144 & 145. In the district court of the United States for Porto Rico. Federico Amadeo vs. Royal Insurance Company. Transcript of record.

39 In the District Court of the United States for Porto Rico.

|   |   |                         |
|---|---|-------------------------|
| FEDERICO AMADEO, for the Use of and<br>Jointly with The Pastor Marquez Com-<br>pany, in Liquidation,<br>vs.<br>THE ROYAL INSURANCE COMPANY. | } | C. L. Nos. 144 and 145. |
|---|---|-------------------------|

Citation.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Royal Insurance Company and F. H. Dexter, Esq., its attorney, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, District of Columbia, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the district court of the United States for Porto Rico, wherein Federico

Amadeo for the use of and jointly with The Pastor Marquez Company in liquidation are plaintiffs and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 31st day of December, A. D. 1904, and of the Independence of the United States the one hundred and twenty-ninth.

[Seal United States District Court for the District of Porto Rico.]

CHAS. F. McKENNA,  
Judge of the District Court of the  
United States for Porto Rico.

40

Form No. 282.

Return on Service Writ.

UNITED STATES OF AMERICA, }  
The District of Porto Rico, } ss:

I hereby certify and return that I served the annexed citation on the therein-named The Royal Insurance Company by handing to and leaving a true and correct copy thereof with F. H. Dexter, its attorney personally at San Juan in said district on the 5th day of January, A. D. 1905.

E. S. WILSON,  
U. S. Marshal.  
— — —, Deputy.

41 [Endorsed:] No. 144 & 145. In the district court of the United States for Porto Rico. Federico Amadeo for the use of and jointly with The Pastor Marquez Company in liquidation vs. The Royal Insurance Co. Citation. Marshal's fees. 1 service, \$2.00 Expenses — D.

42 In the District Court of the United States for Porto Rico.

FEDERICO AMADEO, for the Use of and  
Jointly with The Pastor Marquez Com-  
pany, in Liquidation,

C. L. Nos. 144 and 145,  
Consolidated.

vs.

THE ROYAL INSURANCE COMPANY.

Writ of Error.

UNITED STATES OF AMERICA, ss :

The President of the United States of America to the Honorable  
Chas. F. McKenna, judge of the district court of the United States  
for Porto Rico, Greeting :

Because in the record and proceedings, as also in the rendition of  
the judgment of a plea which is in the said district court of  
the United States for Porto Rico, before you, between Federico  
Amadeo for the use of and jointly with The Pastor Marquez Com-  
pany in liquidation, plaintiffs in error, and The Royal Insurance  
Company, defendant in error, a manifest error has happened to the  
great damage of the said Federico Amadeo for the use of and  
jointly with The Pastor Marquez Company in liquidation, plain-  
tiffs in error, as by the complaint appears.

We, being willing that error, if any has been, should be duly cor-  
rected and full and speedy justice done to the parties aforesaid in  
this behalf, do command you, if judgment be therein given, that  
then under your seal, distinctly and openly, you send the record and  
proceedings aforesaid, with all things concerning the same, to the

43 Supreme Court of the United States, together with this writ,  
so as to have the same at the city of Washington, District  
of Columbia, on the 30th day of January next, in the said  
Supreme Court, to be then and there held, that the record and pro-  
ceedings aforesaid being inspected, the said Supreme Court may  
cause further to be done therein to correct that error, what of right  
and according to the laws and customs of the United States should  
be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the  
Supreme Court of the United States, the 31st day of December, in  
the year of our Lord one thousand nine hundred and four.

H. H. SCOVILLE,

Clerk of the U. S. District Court for Porto Rico.

Allowed by

[Seal United States District Court for the District of Porto Rico.]

CHAS. F. McKENNA,

Judge of the District Court of the  
United States for Porto Rico.



44 [Endorsed:] No-. 144 & 145. In the district court of the United States for Porto Rico. Federico Amadeo for the use of and together with The Pastor Marquez Company in liquidation vs. The Royal Insurance Company. Writ of error.

Endorsed on cover: File No. 19,666. Porto Rico D. C. U. S. Term No. 201. Federico Amadeo, for the use of and jointly with The Pastor Marquez Company, in liquidation, plaintiffs in error, vs. The Royal Insurance Company. Filed March 15th, 1905. File No. 19,666.



# **Supreme Court of the United States,**

OCTOBER TERM, 1903.

No. 199.

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ANTONIO JOSÉ AMADEO, FOR THE USE  
OF AND TOGETHER WITH THE PASTOR  
MARQUEZ COMPANY, IN LIQUIDATION,  
Plaintiffs in Error,

VS.

THE NORTHERN ASSURANCE COMPANY,  
Defendant in Error.

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IN ERROR TO THE DISTRICT COURT OF THE  
UNITED STATES FOR THE DISTRICT  
OF PORTO RICO.

**BRIEF FOR PLAINTIFFS IN ERROR.**

## **Statement.**

This is a writ of error to the District Court of the United States for the District of Porto Rico.

On April 21, 1903, Antonio José Amadeo, one of the plaintiffs in error, filed his declaration, alleging

that he was a citizen of Porto Rico; that on December 21, 1884, the defendant in error, The Northern Assurance Company, an English corporation, delivered to him a policy of fire insurance on certain property belonging to him, to wit, two ranchos (farm buildings) and a cooperage, for the sum of three thousand one hundred pesos (approximately \$3,100), from December 21, 1884, to December 21, 1885 (Rec., pp. 1, 2); and that on February 7, 1885, said property was destroyed by fire, the damage being to the amount of the sum insured (Rec., p. 4).

The declaration further averred that all the conditions of proper notice and inventory had been complied with, and that no conditions which might defeat recovery existed; and that the plaintiff had made a demand for the amount, but that the defendant had not paid and refused to pay. Damages were laid at \$10,000 (Rec., p. 4).

The summons having been properly issued (Rec., p. 5) and served on the general agents, in Porto Rico, of the defendant (Rec., p. 6), the defendant demurred to the declaration (Rec., p. 6, bottom) on the following grounds:

"**FIRST.**—For the reason that it does not state a cause of action.

"**SECOND.**—Because upon the face thereof, and by the admissions of the plaintiff contained therein, it appears that the said alleged cause of action is prescribed and barred by the Statute of Limitations and the period of prescription as provided in the civil and commercial codes."

Issue having been joined on the demurrer (Rec., p. 7, top), the demurrer was argued and overruled, and defendant was permitted to plead (Rec., p. 7).

Thereupon the defendant filed its plea (Rec., p. 7), which contained among others, the following allegations:

"SECOND.—For a second and further plea to the said declaration, defendant says that plaintiff ought not to have and recover herein for the reason that the alleged cause of action did not accrue within fifteen years before this suit, and of this it puts itself upon the country.

"THIRD.—For a third and further plea to the said declaration defendant says that plaintiff ought not to have and recover herein for the reason that plaintiff has no interest in the proceeds of the policy sued on, nor did he have at the time of the institution of this suit, the said policy and the proceeds thereof having been transferred, sold and assigned by him by notarial document May 2, 1885, to the firm of Pastor Marquez & Company, who are the only persons entitled to sue herein, and this defendants are ready to verify."

After having demurred to the allegations just cited on the ground that they "are not sufficient in law to bar him from having the aforesaid action," and having joined issue on the remaining allegations (Rec., p. 10) the plaintiff, by leave of Court, amended the declaration as follows (May 18, 1903) (Rec., p. 12):

"In the title of the case after the name of the plaintiff add the following words: 'for the use of and together with Pastor Marquez Company in liquidation.'

"In the body of the declaration add at the end of it the following paragraph:

"And plaintiff avers that about the month of August, 1885, the said policy was assigned to the Pastor Marquez Company, which is a company in liquidation and of which Pedro Salazar is liquidator."

The demurrer to the second plea (Statute of Limitations) was thereupon overruled (Rec., p. 13, bot-

tom), plaintiffs duly excepting, and the plaintiffs filed a replication to such plea (Rec., p. 14), as follows:

"And as to the second plea of the defendant above pleaded, the plaintiffs say that the same limitation and prescription therein pleaded was interrupted extra-judicially," etc.

To this replication the defendant demurred (Rec., p. 14), and the demurrer was sustained by the Court, plaintiffs duly excepting (Rec., p. 15). The plaintiffs declining to plead further, judgment was rendered against them (Rec., p. 15).

Thereupon this writ of error was sued out by the plaintiffs.

### **Summary.**

In other words, the Court below held that a suit brought on April 21, 1903, upon a cause of action arising out of a contract of fire insurance on, or soon after February 7, 1885 (slightly more than eighteen years having elapsed since the fire), was barred by prescription, holding that the legal period of prescription is fifteen years. It also held that this period of prescription could not have been interrupted extra-judicially, that is to say, by extra-judicial demand.

## JURISDICTION.

The defendant below being a foreign corporation, and the amount in dispute exceeding \$1,000, the Court below had jurisdiction.

By the act establishing the government of Porto Rico (Foraker Act, 31 Stat. at L., Chap. 191, Sec. 34, Apr. 12, 1900), it was provided that "Porto Rico shall constitute a judicial district, to be called the District of Porto Rico, \* \* \* The District Court for said district shall be called the District Court of the United States for Porto Rico \* \* \* and shall have in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizant in the Circuit Court of the United States, and shall proceed therein in the same manner as a Circuit Court."

By the Act of March 2, 1901 (31 Stat. at L., Ch. 812, Sec. 3), the foregoing act was amended, it being provided that "the jurisdiction of the District Court of the United States for Porto Rico in civil cases shall, in addition to that conferred by the Act of April 12, 1900, extend to and embrace controversies where the parties or either of them are citizens of the United States or citizens or subjects of a foreign state or states wherein the matter in dispute exceeds exclusive of interest or costs the sum or value of \$1,000."

This Court has jurisdiction in the case. In *Royal Insurance Company vs. Martin*, 192 U. S., 149, 161, it was held that this Court has jurisdiction in appeals and writs of error coming from Porto Rico "in every case, without regard to the sum or value in dispute, where the Constitution of the United States or a treaty thereof or an act of Congress is brought in question and the right claimed thereunder is denied, *and in every other case where the sum or value in dispute exceeds \$5,000, exclusive of costs.*" As the amount involved is \$10,000, the jurisdiction of the Court is clear.



### **Assignment of Errors.**

The assignment of errors is found on page 16 of the printed record, and is in the following words:

"1. The overruling by the Court of the demurrer of the plaintiffs to the second plea of defendant to the declaration.

"2. Sustaining the demurrer of the defendants to the replication of the plaintiffs to the said second plea.

"3. That the Court erred in rendering judgment for the defendant and against the plaintiffs upon the pleadings in said cause, and that said judgment is contrary to the law and the facts as stated in the pleadings in said cause."

Under these assignments plaintiff in error proposes to prove the following points, the validity of either of which must lead to a setting aside of the judgment of the Court below:

1. The period of prescription on an action on a policy of fire insurance accruing in 1885 is twenty years.

2. The period of prescription may be interrupted by extra judicial demand.

### **POINT I.**

**The period of prescription on an action on a policy of fire insurance, accruing in 1885, is twenty years.**

This point has been fully considered by this Court in its decision in the case of *Royal Insurance Company vs. Miller*, 199 U. S., 353. In that case the policy of insurance was in favor of Antonio Amadeo,

one of the present plaintiffs in error, the fire occurred on February 6, 1885, suit was brought April 23, 1902, and a co-plaintiff, Lucas Amadeo, was added by leave of Court on May 13, 1903. In the case at bar the fire occurred on February 7, 1885 (it is understood by counsel that this was the same conflagration, occurring in the midnight hours between February 6 and 7, 1885), the suit was brought on April 21, 1903, one year later, and the co-plaintiff was added on May 18, 1903, five days later, than in the former case.

The following extract from pages 365 to 368 of the decision of this Court, in that case, applies, with the exceptions stated in the last paragraph, the name of the co-plaintiff, and the admission by the defendant-in-error, as to the nature of the action, word for word to the case at bar. That the action is a "personal action" is clear, falling as it does, under the definition of "accion personal" given by *Alcubilla* in his *Diccionario de la Administracion Española*, Madrid, 1886, Vol. I., page 124:

"It is that which may be brought against the same person who, because of a contract or an act has obligated himself to give or to do or not to do something; or against the heirs of such person."

It is also clear that the decision of this Court in that case would apply if the contract were construed to be a "commercial contract," subject to the provisions of the Code of Commerce, for Article 943 of that code provides as follows:

"The actions which by virtue of this code do not have a fixed period in which to be brought judicially, shall be governed by the provisions of the common law."

*Royal Insurance Company vs. Miller*, 199 U. S., 353, 365 to 368:

"FIFTH.—The fire occurred on February 6, 1885. Suit was brought on April 23, 1902,

and Lucas Amadeo was made a party plaintiff on May 13, 1903. In other words, even although the cause of action on the policy only arose within a reasonable time after the making of proofs of loss more than 15 years elapsed between the arising of the cause of action and the bringing of this suit. Both parties at bar admit that the action on the policy was personal in its nature, and barred by the term of prescription governing actions of that character.

"As we have seen, the defendant (plaintiff in error here) specially pleaded and relied upon the prescription of fifteen years. The applicability of that prescription is based upon Article 1964 of the Civil Code, which provides: 'A mortgage action prescribes after twenty years, and those which are personal and for which no special plan of prescription is fixed, after fifteen years.'"

"As both parties concede that there was no special term of prescription fixed by the Civil Code for an action upon an insurance policy, it follows that the right to sue on the policy was barred by the limitation in question, if that limitation applied. The defendants in error—the plaintiffs below—deny its applicability, and insist that the term of prescription was twenty years, and, moreover, insist that, even if the fifteen-year term applied, the action was not barred, because of interruptions of the prescription asserted to result from the proof as to alleged demands and acknowledgments. The trial Judge, whilst rejecting the claim of the plaintiffs as to the twenty-year prescription, and maintaining that of the defendant as to the fifteen-year prescription, yet held the action not barred, because of the interruptive effect which the Court considered arose from certain demands or acknowledgments, which it was deemed were established by the proof. Before coming to consider the alleged errors on this subject we must determine whether the time of prescription was fifteen years, as asserted by the defendant and held by the trial Court, or twenty years as contended by the plaintiffs.

"The loss under the policy occurred in 1885, and the right of action arose, therefore, in

that year. The Civil Code was not then applicable to Porto Rico, not having been extended to that island by royal decree until 1889, and the claim that the twenty-year prescription is the only controlling period is based upon that fact. Whilst it is conceded that by the terms of the Civil Code personal actions were barred by fifteen years, the argument is that by the Code actions which arose prior to its promulgation were to be controlled by the prior law, which, it is insisted, was twenty years. The provision of the Code relied upon to maintain this proposition is Article 1939, which reads as follows:

“ ‘ARTICLE 1939. Prescription, which began to run before the publication of this code, shall be governed by the prior laws; but if, after this code became operative, all the time required in the same for prescription has elapsed, it shall be effectual, even if, according to said prior laws, a longer period of time may be required.’ ”

“ As the fifteen years fixed by the code for the bringing of personal actions had not elapsed between the promulgation of the code and the bringing of this action, it follows that the controversy was not within the terms of the proviso, and therefore the limitation of the cause of action is to be determined, not by the code provision fixing fifteen years, but by the prior law. What was the term of prescription of personal actions under the prior law is, therefore, the question.

“ In the absence of express legislation concerning Porto Rico, what was the prior law applicable to that island concerning the limitations of personal actions, must be fixed by ascertaining the period of prescription for personal actions generally prevailing under the Spanish law. Schmidt, Civil Law of Spain and Mexico, p. 35. Whilst the general Spanish law, prior to the promulgation of the civil code, is to be derived from a review of the successive Spanish codes, nevertheless the Spanish law prevailing prior to the code is primarily to be found in the code known as the Novísima Recopilación.

"By Law 5, Title VIII., Book 11, of the Novísima Recopilación, it appears that the term of prescription of personal actions was twenty years (White, New Recopilación, Vol. 1, p. 96). And from an edition of the Spanish codes, with concordance and notes, published at Madrid in 1850, under the text of the Novísima Recopilación in question (Vol. 9, p. 458), it appears that the limitation of twenty years as to personal actions, as expressed in the text of the Recopilación, prevailed as early as 1348, in the code known as the Ordenamiento de Alcalá.

"Moreover, the Supreme Court of Spain has held, in repeated decisions, that the provision found in the Novísima Recopilación, above alluded to, was the general law of Spain on the subject, in force prior to the adoption of the civil code, and that by that law the limitation of personal actions was twenty years. References to a Spanish publication, in which many such decisions are reported, are given in the margin.\*

"It follows that the court below erred in applying the fifteen-year period of prescription, and that as twenty years had not elapsed from the time the cause of action arose to the bringing of the suit on the policy, the right to sue was not barred by limitation."

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\* Decisions of the Supreme Court of Spain, sitting at Madrid, reported in the *Jurisprudencia Civil*, holding the period of prescription of twenty years applicable to personal actions: Sentence of January 21, 1863, Vol. 8, p. 54, No. 20; Sentence of March 17, 1865, Vol. 11, p. 326, No. 92; Sentence of April 8, 1865, Vol. 11, p. 469, No. 139; Sentence of June 4, 1886, Vol. 60, p. 24, No. 7a; and Sentence of October 3, 1892, Vol. 72, p. 142, No. 40 of the last mentioned Sentence. See also Sentence of March 24, 1892, Vol. 71, p. 307 (after the enactment of the code); Sentence of March 9, 1865, Vol. 14, p. 264, No. 75; Sentence of May 12, 1874, Vol. 30, p. 56, No. 181; Sentence of April 1, 1884, Vol. 54, p. 548, No. 137; Sentence of March 12, 1888, Vol. 61, p. 404, No. 89, and Sentence of April 19, 1901, Vol. 91, p. 556, No. 105.

It follows, as a matter of necessity, that the plaintiffs below should never have been placed in a position in which they were compelled to plead an interruption of the statute, and that, therefore, the judgment of the Court below should be set aside with instructions to sustain plaintiff's demurrer (Rec., p. 10) to the second plea (Rec., p. 7).

*Bauserman v. Blunt*, 147 U. S., 647, 652, 661.

## POINT II.

**The period of prescription may be interrupted by extrajudicial demand.**

Under the Civil Code, Art. 1973—

“Prescription of actions is interrupted by their institution before the court by *extrajudicial claim* (*reclamacion extrajudicial*) of the creditor, and by any act of acknowledgment of the debt by the debtor.”

(See Civil Code in Force in Cuba, Porto Rico, and the Philippines, U. S. War Department Translation, Washington, 1899). This Code was in force from 1889, (Royal Decree, p. 3, War Dept. Transl.), having been continued in force by Section 7 of the Foraker Act, Chap. 191, Laws of 1900; 31 Stat. at L., pp. 77-79, which provided

“That the Laws and ordinances of Porto Rico now in force shall continue in full force and effect, except as altered, amended or modified hereinafter, or as altered or modified by military orders and decrees in force when this act shall take effect, and so far as the same are not inconsistent or in conflict with the statutory laws of the United States not locally inapplicable,” &c.

The Civil Code of Porto Rico, passed in 1902, superseded this code, but it reenacted the law relative to the interruption of actions in exactly the same words, in Section 1874.

The Commercial Code in Article 943 provides as follows:

“The actions which by virtue of this code do not have a fixed period in which to be brought judicially, shall be governed by the provisions of the common law.”

As there is no special provision for prescription of actions on fire insurance contracts in the Commercial Code, the present case is governed by the ordinary rules of prescription of the “common law” as embodied in the Civil Code.

(See War Department Translation, Code of Commerce, 1889, p. 5 n. 1; Code went into effect May 1, 1886. It was continued in force by Section 7 of the Foraker Act above cited.)

*Escrache*, in his “*Diccionario Razonado de Legislacion y Jurisprudencia*,” Paris, 1852, defines a demand “*reclamacion*” (p. 1416), as follows (translated):

“The opposition or contradiction, either oral or written, against some thing as unjust or showing no consent to the same; and the *reclaiming*, or the recovery or demand which one who holds title to a thing makes against him who has possession of the same or retains it.”

Under the Code, therefore, a demand is sufficient to interrupt the running of the prescription.

See also, the laws of *Las Siete Partidas*, Partida 3, Title 29, Law 29, translated as follows by Lislet & Carlton in “*Laws of Las Siete Partidas*,” New Orleans, 1820:

“Likewise we say, that if a man owe another anything which he was bound to give him, and the creditor remained so long with-



out demanding it, that the other began to acquire the debt by prescription; if then the debtor renew the obligation, by executing an act or giving security or a pledge for it; or by paying something by way of damages, or as a part of the debt; or by doing anything else of a similar nature, after he had begun to prescribe for it; the prescription will be thereby interrupted and the time lost during which it had to run. *And so we say it would be, if the creditor demand the debt, in the presence of friends or of arbitrators."*

The *Fuero Real*, a code in force to-day where not superseded by provisions of the modern codes (*Alcubilla, Diccionario de la Administracion Española*, Madrid, 1886, Vol. 2, p. 543, "Article" *Codigo*), in Book 2, Title II., law 7, provides as follows:

"We establish that a person in or out of the country wishing to interrupt loss by prescription, may demand before the King his right, thing, or summon by a certain signature that he may answer, or by a letter of the Mayor, *or through his friend*, as the law demands."

In other words, the prescription of actions may be interrupted by extra-judicial claim, that is to say, by a formal demand made upon the debtor.

On this point see the following decisions of the Supreme Court of Spain, sitting at Madrid, contained in the series of reports entitled "*Jurisprudencia Civil*":

Sentence of July 14, 1871, Vol. 24, No. 282, pp. 369, 381.

Sentence of February 12, 1875, Vol. 31, No. 71, pp. 322, 326.

Sentence of January 12, 1893, Vol. 73, No. 10, pp. 45, 49.

Sentence of February 23, 1893, Vol. 73, No. 56, pp. 284, 287.

These decisions are unanimous in holding that the prescription of a personal action may be interrupted by "extra-judicial claim."

The replication, to the effect that the prescription "was interrupted extra-judicially" was, therefore, good in law.

### **Conclusion.**

The Court below should be ordered to set aside the judgment, and to sustain plaintiffs' demurrer to the second plea of the defendant; or, should this Court hold such demurrer to have been well taken, the Court below should be ordered to set aside the judgment, and to deny defendant's demurrer to plaintiffs' replication to the second plea.

Respectfully submitted,

CHARLES M. BOERMAN,  
FRITZ V. BRIESEN,  
Of Counsel for Plaintiffs in Error.

NEW YORK, March 2, 1906.

# **Supreme Court of the United States,**

OCTOBER TERM, 1905.

No. 200.

ANTONIO JOSÉ AMADEO, FOR  
THE USE OF AND TOGETHER  
WITH THE PASTOR MARQUEZ  
COMPANY, IN LIQUIDATION,  
Plaintiffs in Error,

vs.

THE ROYAL INSURANCE COM-  
PANY,  
Defendant in Error.

IN ERROR TO THE DISTRICT COURT OF THE  
UNITED STATES FOR THE DISTRICT OF  
PORTO RICO.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

## **Statement.**

The facts and pleadings in this case are so similar to those in Case No. 199 that a decision in that case must necessarily apply to the present case. The cases in their main features are practically identical.

The plaintiffs in error are the same as those in Case No. 199. The defendant is an English corporation (Rec., p. 1).

The amount involved is \$24,000, the case below being a consolidation of two suits between the

same parties, one for \$9,000 and one for \$15,000 (Rec., pp. 1, 26).

The declarations were filed on April 21, 1903 (Rec., p. 1), the co-plaintiff was added on May 18, 1903 (Rec., pp. 23, 24).

The policy in the first suit was dated December 21, 1884 (Rec., p. 1), and in the second suit September 15, 1884 (Rec., p. 7).

The fire took place on February 7, 1885 (Rec., pp. 6, 11).

The pleas raising the defense of prescription will be found on pages 17 and 19 of the printed record; plaintiffs' demurrers to such pleas on pages 20 and 21; the record of the overruling of the demurrers on page 26; plaintiffs' replication on page 27; defendant's demurrer thereto on page 27; and the record of the sustaining of the demurrer and judgment on pages 28 and 29.

Whatever action the Court may deem proper to take in case No. 199 will necessarily be the proper action in the present case.

Respectfully submitted,

CHARLES M. BOERMAN,  
FRITZ V. BRIESEN,  
Of Counsel for Plaintiffs in Error.

NEW YORK, March 2, 1906.

# Supreme Court of the United States,

OCTOBER TERM, 1905.

No. 201.

FEDERICO AMADEO, FOR THE  
USE OF AND JOINTLY WITH  
THE PASTOR MARQUEZ COM-  
PANY, IN LIQUIDATION,  
Plaintiffs in Error,

vs.

THE ROYAL INSURANCE COM-  
PANY,  
Defendant in Error.

IN ERROR TO THE DISTRICT COURT OF THE  
UNITED STATES FOR THE DISTRICT OF  
PORTO RICO.

## BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

### Statement.

The facts and pleadings in this case are so similar to those in case No. 199 that a decision in that case must necessarily apply to the present case. The cases in their main features are practically identical.

The plaintiff in error, Federico Amadeo, is a citizen of Porto Rico. The defendant is an English corporation (Rec., p. 1).

The amount involved is \$40,000, the case below being a consolidation of two suits, between the same parties, one for \$10,000 and one for \$30,000 (Rec., pp. 1, 27).

The declarations were filed on April 21, 1903 (Rec., p. 1); the co-plaintiff was added May 18, 1903 (Rec., p. 24).

The policy in the first suit was dated February 29, 1884 (Rec., p. 1), and in the second suit July 26, 1884, (Rec., p. 7). The first policy was issued to the mercantile society styled "Amadeo Hermanos," but was assigned to the plaintiff Amadeo, with assent of the defendant, on January 19, 1885 (Rec., p. 6).

The fire took place on February 7, 1885 (Rec., pp. 6, 12).

The pleas raising the defense of prescription will be found on pages 17 and 19 of the Record; plaintiffs' demurrers to such pleas on pages 21 and 22; the record of the overruling of the demurrers on page 27; plaintiffs' replication to the second plea on pages 27-28; defendant's demurrer thereto on page 28; and the record of the sustaining of the demurrer, and of judgment, on pages 28 and 29.

Whatever action the Court may deem it proper to take in Case No. 199 will necessarily be the proper action in the present case.

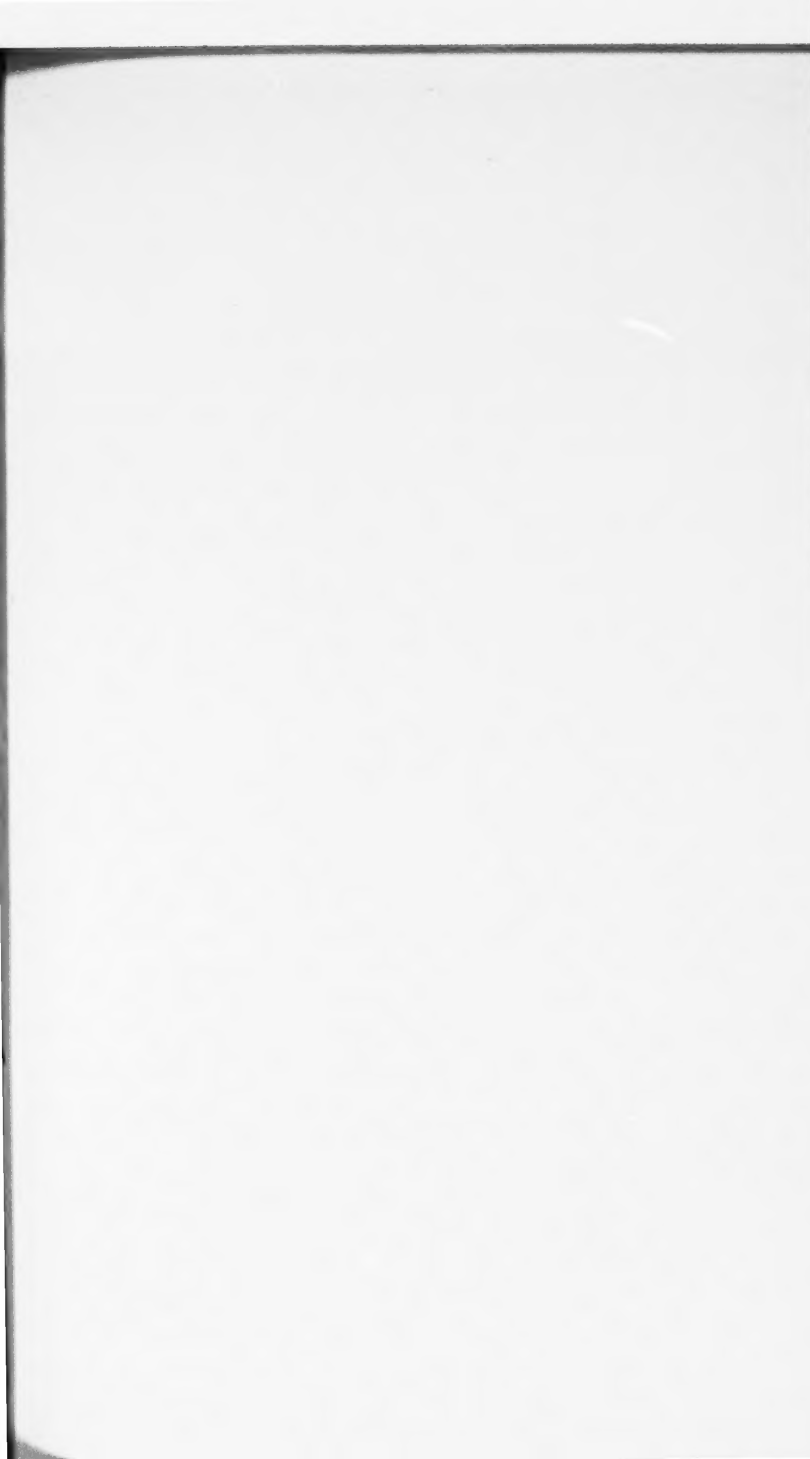
Respectfully submitted,

CHARLES M. BOERMAN,

FRITZ v. BRIESEN,

Of Counsel for Plaintiffs in Error.

NEW YORK, March 2, 1906.





**FILE COPY.**

Office Supreme Court U. S.  
**FILED**

**MAR 8 1906**

**JAMES H. McMUNNEY,**  
Clerk.

IN THE

**Supreme Court of the United States.**

October Term, 1905.

No. 199.

---

ANTONIO JOSÉ AMADEO, FOR THE USE OF AND TOGETHER  
WITH THE PASTOR MARQUEZ COMPANY, IN  
LIQUIDATION,

*Plaintiffs in Error,*

*vs.*

THE NORTHERN ASSURANCE COMPANY.

---

No. 200.

---

ANTONIO JOSÉ AMADEO, FOR THE USE OF AND TOGETHER  
WITH THE PASTOR MARQUEZ COMPANY, IN  
LIQUIDATION,

*Plaintiffs in Error,*

*vs.*

THE ROYAL INSURANCE COMPANY.

---

In Error to the District Court of the United States for the  
District of Porto Rico.

## SUPPLEMENTAL BRIEF ON BEHALF OF THE SURVIVING PLAINTIFF IN ERROR.

Information was received this morning (March 6, 1906) by the New York counsel for plaintiffs in error, that the counsel for the defendants in error in the above two cases have suggested upon the record the death of the plaintiff, Antonio José Amadeo.

This supplemental brief is intended to show that Rule 15 of the Supreme Court does not apply to these cases.

*Antonio José Amadeo is only a nominal plaintiff. He, or his estate, has no further pecuniary interest in this litigation. This is a fact admitted upon the record by both sides.*

The original plaintiff in these cases was Antonio José Amadeo (No. 199, Rec., p. 1; No. 200, Rec., pp. 1, 7). In each case the defendant pleaded that Amadeo had no interest in the suit. In case No. 199 (Rec., p. 8), plea 3d sets forth that Amadeo "has no interest in the proceeds of the policy sued on, nor did he have at the time of the institution of this suit, the said policy and the proceeds thereof having been transferred, sold and assigned by him by notarial document May 2, 1885, to the firm of Pastor Marquez Company, who are the only persons entitled to sue herein."

In case No. 200, the defendant (Rec., pp. 17, 19), filed a plea (3d) alleging that the "plaintiff has no interest in the proceeds of the policy sued on, nor did he have at the time of the institution of this suit, the said policy and proceeds thereof having been transferred, sold and assigned by him by notarial document on ———, 1885."

Thereupon the plaintiff, by leave of court (and without objection on the part of the defendants), amended his declarations (Case No. 199, Rec., p. 12; Case No. 200, Rec., p. 24), by adding to the title of the case "for the use of and together with Pastor Marquez Company, in liquidation," and amended his declaration by adding at the end of it the following paragraph:

"And plaintiff avers that on or about August, 1885, the said policy was assigned to the Pastor Marquez Company, which is a company in liquidation and of which Pedro Salazar is liquidator."

The pleadings, above outlined, show plainly that, in Porto Rico, not only a chose in action may be assigned, but that also the real party in interest is a necessary party to the suit. That this is the case is also shown by the following authorities:

*Moyle, Contract of Sale in the Civil Law*, Oxford, 1892, p. 37:

"The effect of the sale of the right of action is that it operates as an assignment, entitling the assignee to sue, either by direct action in the name of the assignor, or in his own name by *actio utilis*."

*Institutions of the Civil Law in Spain, Asso. & Manual*, Tr. by Johnston, London, 1825, p. 95:

"A right is either in the thing or to the thing \* \* \* a right to the thing is that which belongs to any as against another person to oblige him to give, to do, or not to do something \* \* \* of the second kind or of species of obligations which arise from contract."

Same, p. 96:

"The first species of right in the thing is that of dominion, which is a power that arises from the right in the thing, by reason of which he may dispose of and derive from it every possible advantage, may exclude others from its use, and claim it from any possessor, unless a contract, or the law, hinders it."

Same, p. 209:

"2d. That things not corporeal may be the object of this contract (sale); *ex gr.* rights, actions, etc."

See also Chapter 7, "Assignments of Credits and Other Incorporeal Rights," p. 199, etc. Civil Code in force in Cuba, Porto Rico and the Philippines, War Dept. Tr., 1899, and particularly the following Articles thereof:

"Art. 1526. The assignment of a credit, right or action shall produce no effect against a third person, but from the time the date is considered fixed, in accordance with Arts. 1218 and 1227."

"Art. 1528. The sale or assignment of a credit includes that of all the accessory rights, such as the security, mortgage, pledge or privilege."

It having been admitted, as already explained, by both sides, that a transfer was made by a notarial document we need not go into the particular manner in which credits may be assigned.

*Escrache*, in his *Diccionario Razonado de Legislacion y Jurisprudencia*, Paris, 1852 (p. 49), defines "accion" as follows:

(Translated): "The right to demand a certain thing and the legal method by which we seek under the law that which is ours or that which is owing to us.

"\* \* \* The action understood in its first sense, that is, as a right which belongs to us to demand something, may be considered movable or immovable according to its subject-matter, although it is neither the one nor the other by nature. It is movable if it pertains to the demand of a movable thing, or immovable if it pertains to the demand of an immovable or real thing."

"Credito" is defined (p. 522) as

"a debt which some one holds in his favor."

A chose in action relating to a demand for a sum of money under a fire insurance contract, or a right to demand payment in case of loss, is therefore personal or movable property, which "is the object of commerce," and falls therefore, under Art. 1864 of the Civil Code. This code, while not in effect at the date of the transaction, may be considered as being declaratory of the common law in force at that time:

"Art. 1864. All personal property which is the object of commerce may be given as a pledge, provided it be capable of being possessed."

A chose in action, following, as it does, the person of the owner, is always capable of "*being possessed*" by the owner.

As already explained, Antonio José Amadeo is only a nominal party to the suit. He admits this himself in amendment to the complaint. Defendants have admitted it. As explained, therefore, the Pastor Marquez Company is the real party in interest, and under the Spanish law, holds a legal title. No prejudice can, therefore, arise to the defendants by the consideration by the court of the writs of error in these two cases at this time. Nothing would be gained by having the personal representative of Amadeo intervene, and much delay in the possible trial of the cases may be avoided.

Rule 15 of the Supreme Court provides that the proper representatives of the deceased party may or must intervene "whenever, pending a writ of error or appeal in this court, *either party shall die.*" The rule does not state that intervention is necessary when "any one of the parties may die," and it is believed to be the spirit of the rule that *only when a real party in interest dies*, his personal representative must intervene. If this be its spirit, it would be in consonance with the general rule of the law on this subject and with

former decisions of the court. See, for instance, "*Encyc., Pleading and Practice*," Vol. 5, p. 815, Tit. "Death:"

"It has been uniformly held that the death of the nominal plaintiff in an action at law does not abate the action. The action proceeds in the name of the real party in interest, and need not be revived in the name of the representatives of the deceased."

*Cyc. of Law and Procedure*, Vol. 2, p. 771:

"The death of one of several appellants or plaintiffs in error does not abate a suit, nor necessitate a revival of it in the Appellate Court. The cause survives to, and may be prosecuted by, the other plaintiffs in error."

*McKinney vs. Carroll*, 12 Pt., 66, 71:

"On consideration of the suggestion and motion made by Mr. Jones of counsel, for the plaintiffs in error, in this cause, on a prior day of the present term of this court, to wit: on Thursday, the 11th day of January, it is the opinion of this court that it is unnecessary to make the heirs and representatives of John McKinney, whose death has been suggested on the record, parties to this writ of error; as the cause of action survives to the two other plaintiffs in error."

*Moses vs. Wooster*, 115 U. S., 285, 288:

"Here, however, there is no need of a revivor that substantial justice may be done. The decree below was against all the defendants jointly, upon a joint cause of action. It affected all alike, and the interest of the decedent is in no way separate or distinct from the others."

*Campbell vs. Strong*, Hempst., Sec. 265, F. C., No. 2367a:

"The suit ought not to have abated upon the suggestion of the death of James Miller, who was then acting governor of the territory, for he was only a nominal party upon the record, and his name might have been stricken out without injury, and that of the governor alone written who, in legal contemplation, is always in being."

*Insert paragraph on next page*

This procedure is the one adopted by the most enlightened jurisdictions. It is the practice adopted by the courts of the State of New York (See *Palmer vs. Davis*, 28 N. Y., 242). It is also the practice of the English Courts, Dicey on Parties to Actions, Am. Ed., p. 526:

"*Misjoinder*.—Where an action is brought by A and B, which should be brought by A alone, judgment may be given in favor of such one (or more) of them as are entitled to recover."

*Bremner vs. Hull*, L. R., 1 C. P., 748.

See also *Perry vs. Mechanics' Mutual Ins. Co.*, 11 F. R., 478, 482, in which it was held that, because of the liberal provisions of the Code of Rhode Island, "the court may order any party improperly joined in any action to be stricken out."

While these cases are based upon the codes or practice acts of the States in which the causes of action respectively arose, nevertheless they show that it is to-day deemed no more than just that any party improperly joined be stricken out in order not to put his co-plaintiffs or co-defendants to the unnecessary trouble of another trial.

It is distinctly provided by R. S., 701, that

"The Supreme Court may affirm, *modify*, or reverse any judgment, decree, or order of a circuit court, or district court acting as a circuit court, or of a district court in prize causes, lawfully brought before it for re-

view, or may direct such judgment, decree or order to be rendered, or such further proceedings to be had by the inferior court, *as the justice of the case may require.*

\* \* \*

*insert in page 7* / It may be said that should the court hold that Amadeo should never have been a party in this case, the proper course for the court to pursue would be to order the judgment set aside, with directions to strike out the name of Amadeo.

If, therefore, Amadeo was a proper party, he was not a necessary party, and his representatives need not intervene. If he was an unnecessary party, the court below may be ordered to strike his name from the title of the suit, leaving only the Pastor Marquez Company, the real party in interest.

Respectfully submitted,

FRITZ V. BRIESEN,

*Of Counsel for Plaintiffs in Error.*

New York, March 6, 1906.



# FILE COPY.

## Supreme Court of the United States.

OCTOBER TERM, 1905.

No. 199.

ANTONIO JOSÉ AMADEO, FOR THE USE  
OF AND TOGETHER WITH THE PASTOR  
MARQUEZ COMPANY, IN LIQUIDATION,  
Plaintiffs in Error,

vs.

THE NORTHERN ASSURANCE COMPANY.

Office Supreme Court U. S.  
FILED

APR 23 1906

JAMES H. McCONNELL,  
Clerk.

No. 200.

ANTONIO JOSÉ AMADEO, FOR THE USE  
OF AND TOGETHER WITH THE PASTOR  
MARQUEZ COMPANY, IN LIQUIDATION,  
Plaintiffs in Error,

vs.

THE ROYAL INSURANCE COMPANY.

No. 201.

FEDERICO AMADEO, FOR THE USE OF AND  
JOINTLY WITH THE PASTOR MARQUEZ  
COMPANY, IN LIQUIDATION,  
Plaintiffs in Error,

vs.

THE ROYAL INSURANCE COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE  
UNITED STATES FOR THE DISTRICT OF  
PORTO RICO.

**MOTION FOR IMMEDIATE ISSUE OF MAN-  
DATE.**

Comes now Fritz v. Briesen, counsel for the  
plaintiffs in error, and moves the Court for leave to

issue the mandates in the above entitled cases immediately in order that the same may be filed in the office of the Clerk of the United States District Court for the District of Porto Rico before the beginning of the May Term of that Court, so that the new trials, ordered in these cases, may not be delayed until the January Term of that Court.

### **Affidavit in Support of Motion.**

STATE OF NEW YORK,        }  
County of New York,       } ss.:

FRITZ v. BRIESEN, being duly sworn, deposes and says:

I am of counsel for the plaintiffs in error in *Amadeo et al. vs. Northern Assurance Company*, No. 199, *Amadeo et al. vs. Royal Insurance Company*, No. 200, and *Amadeo et al. vs. Royal Insurance Company*, No. 201, all of the October Term, 1905. On April 2, 1906, this Court, as I am informed and believe, rendered a judgment in each of these cases, ordering that a new trial be granted.

Under Rule 39 of this Court, the mandates cannot be issued by the Clerk, unless otherwise ordered by the Court, until Wednesday, May 2, 1906. As the mail for Porto Rico leaves New York generally on Saturday, and arrives in Ponce about a week later, the mandates would in all probability not reach Ponce until Saturday, May 12, 1906, or even later, too late to be placed upon the calendar for the May Term of the United States District Court for Porto Rico, sitting at Ponce, beginning on May 14, 1906 (see Rule 1, U. S. District Court for Porto Rico). The cases could not then be reached for trial until the January Term of that Court. I am informed and believe that it is often difficult to obtain juries in Ponce necessary to try all the cases upon the calendar so that these three cases may not all be tried even at the January Term, and one or more of them may not be reached until the May Term of 1907.

In order to prevent this unnecessary delay, the more serious as the causes of action arose in 1885, over twenty years ago, this motion for an immediate issue of the mandate is made.

No harm can come to the defendants in error by the granting of the motion, in so far as I know. The motion is made in good faith.

FRITZ V. BRIESEN.

Subscribed and sworn to }  
before me this 20th day }  
of April, 1906.

EUGENE EBLE,  
Notary Public.

### **Notice of Motion.**

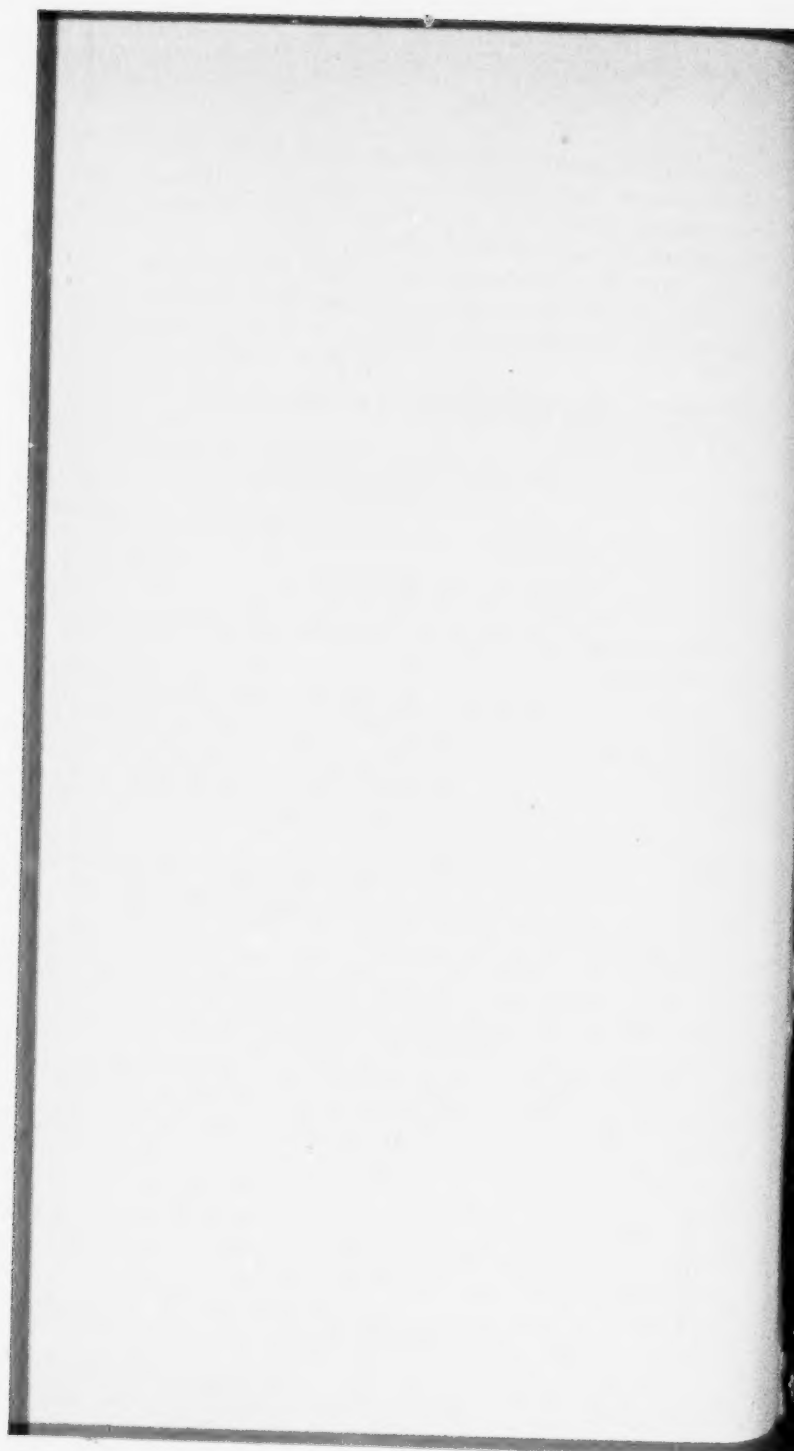
To FREDERICK D. MCKENNEY, Esq., Counsel for Defendants in Error:

Please take notice, that on Monday, the 23d day of April, 1906, at the opening of the Court, or as soon thereafter as counsel can be heard, the motion, of which the foregoing is a copy, will be submitted to the Supreme Court of the United States for the decision of the Court thereon.

Annexed hereto is a copy of an affidavit of Fritz v. Briesen to be submitted with said motion in support thereof.

FRITZ V. BRIESEN,  
Counsel for Plaintiffs in Error.

April 20, 1906.



**FILE COPY.**

Office Supreme Court U. S.  
**FILED**

**MAR 8 1906**

**JAMES E. McKENNEY**  
Clerk.

**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1905.**

**Nos. 199 and 200.**

**ANTONIO JOSÉ AMADEO, FOR THE USE OF AND  
TOGETHER WITH THE PASTOR MARQUEZ COMPANY,  
IN LIQUIDATION, PLAINTIFFS IN ERROR,**

**vs.**

**THE NORTHERN ASSURANCE COMPANY**

**AND**

**SAME**

**vs.**

**THE ROYAL INSURANCE COMPANY.**

**IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF PORTO RICO.**

**BRIEF ON BEHALF OF THE DEFENDANTS IN  
ERROR**

**FRANCIS H. DEXTER,  
FREDERIC D. MCKENNEY,  
JOHN SPALDING FLANNERY,  
*Attorneys for Defendants in Error.***



**SUPREME COURT OF THE UNITED STATES.**

OCTOBER TERM, 1905.

---

**Nos. 199 and 200.**

---

ANTONIO JOSÉ AMADEO, FOR THE USE OF AND  
TOGETHER WITH THE PASTOR MARQUEZ COMPANY,  
IN LIQUIDATION, PLAINTIFFS IN ERROR,

vs.

THE NORTHERN ASSURANCE COMPANY

AND

SAME

vs.

THE ROYAL INSURANCE COMPANY.

---

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF PORTO RICO.

---

**BRIEF ON BEHALF OF THE DEFENDANTS IN  
ERROR.**

---

**STATEMENT OF FACTS IN CASE No. 199.**

This action was begun on the 21st day of April, 1903, by Antonio José Amadeo as the sole plaintiff, to recover from the Northern Assurance Company damages in the sum of

\$10,000 on account of a certain fire insurance policy issued by the latter in favor of the former on certain property situated in Porto Rico.

The policy was dated December 21, 1884, and insured the plaintiff against loss and damage by fire to the extent of 3,100 pesos, or, say, \$2,480, for one year from said date.

The loss is alleged to have occurred February 7, 1885. Defendant pleaded several pleas to plaintiff's declaration, among others that "the alleged cause of action did not accrue within fifteen years before this suit" (R., 7), and that prior to the institution of this suit the said policy and the proceeds thereof had been transferred, sold and assigned by the plaintiff under a notarial document dated May 2, 1885, "to the firm of Pastor Marquez and Company, who are the only persons entitled to sue herein" (R., 8).

To both of these pleas the plaintiff at first demurred (R., 10), but subsequently by leave of court amended his declaration by adding to the caption, after the name Amadeo, the words "for the use of and together with Pastor Marquez Company, in liquidation," and by inserting in the body of the declaration the following :

"And plaintiff avers that about the month of August 1885 the said policy was assigned to the Pastor Marquez Company which is a company in liquidation and of which Pedro Salazar is liquidator" (R., 12).

Thereafter plaintiff's demurrer to defendant's pleas of prescription was pressed and was overruled by the court, to which ruling plaintiff excepted (R., 13) and subsequently replied that the prescription pleaded had been interrupted "extrajudicially." To such replication defendant interposed a demurrer, which was sustained by the court (R., 15).

The plaintiffs thereupon declined to plead further, and the court being of opinion that defendant's plea of prescription constituted a good defense entered judgment upon the entire pleadings as follows :



"And it is therefore adjudged by the court that issue is found in favor of the defendant and that the plaintiffs recover nothing herein and that defendant go hence with judgment for cost against the plaintiffs" (R., 15).

This judgment was entered January 12, 1904 (R., 14).

The plaintiff Amadeo died intestate May 14, 1904. (See suggestion of death and affidavit in support thereof filed in clerk's office; *post*, Appendix A.)

September 20, 1904, the attorney for plaintiffs, without noticing or in anywise adverting to the death of Amadeo, petitioned the trial court for the allowance of a writ of error from this court to review the above judgment, and his petition was allowed September 21, A. D. 1904 (R., 16, 17). Neither in the petition nor in the allowance thereof was any reference made to an appeal bond or other security for costs.

On December 20, 1904, an alleged appeal bond in the sum of \$500, wherein Pastor Marquez and Co. is named as principal and Lucas Amadeo and Felix Salazar are denominated sureties, appears to have been filed in the clerk's office of the district court, but such bond was not approved either by the trial judge or otherwise (R., 17).

Said bond differs in caption from the caption of this cause, being entitled "Antonio José Amadeo and Pastor Marquez and Co. vs. Northern Assurance Co." It recites that "whereas the above-named plaintiffs have sued out a writ of error to the Supreme Court," &c., and is conditioned that "the above-named plaintiffs shall prosecute said writ to effect," &c.

It is signed among other signatures

"Pastor Marquez & Com., en Liquid."

The writ of error in this cause, which is dated December 31, 1904, bears the allowance of the district judge (R., 21), who also signed the citation under same date (R., 19).

Both the writ of error and the citation declare "Antonio José Amadeo for the use of and together with the Pastor Marquez Company in liquidation" to be the true plaintiffs in the cause.

The writ of error asserts that the error complained of and intended to be reviewed wrought damage to "said Antonio José Amadeo for the use of and together with the Pastor Marquez Company in liquidation" (R., 19, 20).

Neither in the petition for the writ of error nor in the writ itself nor in the citation or the alleged appeal bond is any mention made of Pedro Salazar, the liquidator of Pastor Marquez and Company (R., 12).

The transcript of record was docketed in this court March 15, 1905.

### **STATEMENT OF FACTS IN CASE No. 200.**

In this case suit was instituted by Antonio José Amadeo alone upon two policies of insurance against the Royal Insurance Company. Suit was filed April 21, 1903. The policies of insurance were dated September 15 and December 21, 1884, respectively, and insured plaintiff against loss and damage for one year from their respective dates. The loss as alleged occurred February 7, 1885, and defendant refused to pay.

Defendant's demurrer to the declarations having been overruled (R., 15) defendant, among other defenses, pleaded prescription of fifteen years and transfer by plaintiff prior to institution of the suit of the policies and all interest therein.

To these pleas plaintiff at first demurred, but subsequently with leave of the court amended his declaration as follows:

In the title, after the name of the plaintiff, by adding the following words, "for the use of and together with the Pastor Marquez Company in liquidation," and by adding in the body of the declaration the following:

"And plaintiff avers that on or about August, 1885, the said policy was assigned to the Pastor Marquez Company, which is a company in liquidation and of which Pedro Salazar is liquidator" (R., 24).

Plaintiff's demurrer to defendant's pleas of prescription having been overruled and exception thereto noted plaintiff rejoined that the prescription had been interrupted "by extrajudicial demand;" to which defendant interposed a demurrer, which was sustained (R., 27).

And plaintiff having refused to plead further to defendant's plea of prescription and "failing to offer proofs as to the other issues made and tendered" judgment was on the 15th day of January, 1904, entered for defendant (R., 28), whereby it was adjudged:

"That the plaintiffs herein, Antonio José Amadeo, for himself and for the use and benefit of the firm of Pastor Marquez and Company, and Pedro Salazar as liquidating partner of the said Pastor Marquez and Company, take nothing by either of their said suits, and that the defendants go hence without day and recover of and from the said plaintiffs all costs in this behalf incurred or expended, for which execution may issue" (R., 28).

Petition for allowance of writ of error was filed September 20, 1904 (R., 29), and allowed the next day (R., 30).

An alleged appeal bond entitled "José Antonio Amadeo and Pastor Marquez and Company vs. Royal Insurance Co.," appears to have been "filed and approved Dec. 20th, 1904," although the copy of the bond with the transcript of record does not bear any indication of having been approved by the district judge. This bond is signed by "Pastor Marquez & Co. en liqui.," as principal (R., 31).

The writ of error and citation are subject to the same criticisms as in case No. 199.

Pedro Salazar as liquidator of Pastor Marquez and Company, though specially named in the judgment in this case, does not appear in any of the process papers as a party plaintiff in error, and in neither case was there summons and severance or any notice of the suing out of the writ of error given to the successors of the deceased plaintiff Amadeo.

### ARGUMENT.

The writs of error in these cases should be dismissed for manifest irregularities, both in form and in prosecution.

Antonio José Amadeo having died subsequent to judgment, and before any writ of error was sued out, it is certain that no valid writ of error could thereafter be sued out or prosecuted in his name, and assuming that "The Pastor Marquez Company" was otherwise authorized and competent to seek relief in this court, it could only do so in this case after notification to the succession of the deceased. It appears from the pleadings that Pastor Marquez and Company was in liquidation, and that Pedro Salazar was the liquidator. Under the Spanish law as under English common law this action, in so far as the favor of Pastor Marquez and Company was and is concerned, could only be maintained in the name of the liquidator.

While the absence of an appeal bond or the failure of the trial judge to note his approval thereon will not render the writs of error void, still the filing of duly approved security is prerequisite to the prosecution of such writs in the appellate court.

Passing the irregularities in the matter of the appeal bonds, which, in so far at least as the absence of the approval thereof by the district judge is concerned, might be corrected in this court—

Seymour *vs.* Freer, 5 Wall., 822;

Dodge *vs.* Knowles, 114 U. S., 430;

Stewart *vs.* Masterson, 124 U. S., 493;

Beardsley *vs.* Arkansas, &c., Co., 158 U. S., 123—

the defects in the writ of error are irretrievable.

As Antonio José Amadeo was dead at the time the writ of error was prayed for and issued, the suit, at least as to him, abated, subject to be revived only upon compliance with the statutory requirements (sec. 9, act of March 3, 1875, 18 Stats. L., 473) or the rules of this court.

Antonio José Amadeo, originally the sole plaintiff, by amendment to the declaration was made joint plaintiff with "Pastor Marquez Company, in liquidation," of which Pedro Salazar was the liquidator. Amadeo having died, his legal representatives or successors alone had the right to prosecute an appeal in the interest of his estate. The failure of his representatives or successors to appeal or sue out a writ of error did not authorize his coplaintiff to wage the writ on his behalf or in his interest or that of his succession, nor can such coplaintiff prosecute an appeal or writ of error to reverse the judgment against him, even where the right of action survives, except such death shall have been suggested upon the record (Rev. Stats. U. S., sec. 956).

In *Masterson vs. Herndon*, 10 Wallace, 416, it was said :

"It is the established doctrine of this court that in cases at law, where the judgment is joint, all the parties against whom it is rendered must join in the writ of error; and in chancery cases, all the parties against whom a joint decree is rendered must join in the appeal or they will be dismissed. There are two reasons for this: (1) That the successful party may be at liberty to proceed in the enforcement of his judgment or decree against the parties who do not desire to have it reviewed. (2) That the appellate tribunal shall not be required to decide a second and third time the same question on the same record."

In such cases no importance is to be attached to the technical mode of proceeding called summons and severance, but it is settled that it must appear in some way from the record that the missing parties have been notified to appear and had failed to do so, or, if appearing, had refused to join.

In the opinion of this court, delivered by Mr. Chief Justice

Fuller, in the case of *Meagher vs. Minnesota Thresher Mfg. Co.*, 145 U. S., 608, 611, it is said :

"It will be observed that plaintiffs in error are only a portion of the defendants who were proceeded against by the intervening petition, and what has become of the others does not appear. The case should have been determined as to all, before our interposition, if justifiable in any view, could be invoked."

To like effect are—

*Feibelman vs. Packard*, 108 U. S., 14.

*Estis vs. Trabue*, 128 U. S., 225.

*Mason vs. U. S.*, 136 U. S., 581.

*Hardee vs. Wilson*, 146 U. S., 179.

*Sipperly vs. Smith*, 155 U. S., 86.

In the case at bar no proceedings in summons and severance were had, nor does it appear that the death of Amadeo was suggested upon the record, nor that any notice of intention to sue out the writ of error was ever given to his succession.

A writ of error in such a case cannot be amended by inserting the names of other plaintiffs in error, nor can a judgment of severance be now had even with their consent.

*Mason vs. United States*, 136 U. S., 581.

More than two years have elapsed since the judgment complained of was entered, and no persons representing the interest of the Amadeo estate have voluntarily appeared in the case.

The writ of error, having been sued out without notification to the representatives of the deceased, may not be amended, but should be dismissed.

*Dolan vs. Jennings*, 139 U. S., 385.

As was said by this court in the last cited case, "The proper course of proceeding upon this subject has been wholly disregarded," citing—

Rev. Stats. U. S., §§ 955, 956.

Act of March 3, 1875, 18 Stats. L., 470.

Rules U. S. Supreme Court, No. 15.

But if it should be suggested that Amadeo was a merely nominal party without interest in the judgment, and therefore not a necessary party to the writ, we would reply that upon these records such fact cannot be assumed, and, the action having been originally instituted and conducted in the name and for the benefit of Amadeo alone and subsequently prosecuted to judgment for the joint benefit of Amadeo and Pastor Marquez Company, counsel should not now be permitted to assert, in the absence of proofs, that Amadeo was without any interest whatever in the subject-matter of the suit.

But if it should be thought otherwise, then the writ of error is without valid force, for, irrespective of the defect in the name of the commercial association or partnership, viz., Pastor Marquez Company as opposed to Pastor Marquez and Company, it is to be noted that said firm, both at the time it was made a party plaintiff and at the date of judgment, was in liquidation, and, under the Spanish law, as under the common law of England, the appeal, as well as the action, could only be properly prosecuted in the name of the liquidator.

Code of Commerce, articles 218-238.

Opinion Sup. Court of Madrid of October 12, 1888.

It is respectfully submitted the writs of error should be dismissed.

FRANCIS H. DEXTER,  
FREDERIC D. MCKENNEY,  
JOHN SPALDING FLANNERY,  
*Attorneys for Defendants in Error.*

## APPENDIX A.

IN THE SUPREME COURT OF THE UNITED  
STATES, OCTOBER TERM, 1905.

Nos. 199 and 200.

ANTONIO JOSÉ AMADEO, *for the Use of and Jointly with the*  
PASTOR MARQUEZ COMPANY, *in Liquidation, Plaintiffs in*  
*Error,*

vs.

THE NORTHERN ASSURANCE COMPANY, *Defendant in Error,*

and

ANTONIO JOSÉ AMADEO, *for the Use of and Jointly with the*  
PASTOR MARQUEZ COMPANY, *in Liquidation, Plaintiffs in*  
*Error,*

vs.

THE ROYAL INSURANCE COMPANY.

Now come The Northern Assurance Company and The Royal Insurance Company, defendants in error in the above-entitled causes, by their attorneys of record, Francis H. Dexter and Frederic D. McKenney, and suggest the death of Antonio José Amadeo, one of the parties plaintiff in said causes, said Antonio José Amadeo having died intestate at San Juan, Porto Rico, on the 14th day of May, 1904, leaving him surviving children as follows, Aurora, Carmen, Antonio, Rafaela, Belen, Teresa, and Rafael, as will more fully appear from the affidavit of W. D. Noble, hereto annexed and made a part hereof.

FRANCIS H. DEXTER,

FREDERIC D. MCKENNEY,

*Attorneys of Record for Defendants in Error.*



SUPREME COURT OF THE UNITED STATES,  
OCTOBER TERM, 1906.

Nos. 199 and 200.

ANTONIO JOSÉ AMADEO, *for the Use of and Jointly with the* }  
PASTOR MARQUEZ COMPANY, *in Liquidation,* }  
vs.  
THE NORTHERN ASSURANCE COMPANY

and

ANTONIO JOSÉ AMADEO, *for the Use of and Jointly with the* }  
PASTOR MARQUEZ COMPANY, *in Liquidation,* }  
vs.  
THE ROYAL INSURANCE COMPANY.

On Writ of Error to the District Court of the United States  
for the District of Porto Rico.

UNITED STATES OF AMERICA, } ss:  
District of Porto Rico, }

I, David W. Noble, being first duly sworn, do depose and say that during his lifetime I was personally well acquainted with Don Antonio José Amadeo, the party named as plaintiff in error in the above cases; that said Antonio José Amadeo died at San Juan, Porto Rico, on the 14th day of May, 1904, and his body was interred at San Juan; that he died without a will, and that his only children were, to the best of my knowledge, Aurora, Carimen, Antonio, Rafaela, Belen, Teresa, and Rafael.

W. D. NOBLE.

Subscribed and sworn to before me this 15th day of November, A. D. 1905.

[SEAL.]

H. H. SCOVILLE,  
Clerk Dist. Court of U. S. for P. R.



**FILE COPY.**

Office Supreme Court U. S.  
**FILED**

**MAR 8 1906**

**JAMES H. McKENNEY,**

**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1905.**

**No. 201.**

**FEDERICO AMADEO, FOR THE USE OF AND JOINTLY  
WITH THE PASTOR MARQUEZ COMPANY, IN LIQUI-  
DATION, PLAINTIFFS IN ERROR,**

**vs.**

**THE ROYAL INSURANCE COMPANY.**

**IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF PORTO RICO.**

**BRIEF FOR DEFENDANT IN ERROR.**

**FRANCIS H. DEXTER,  
FREDERIC D. McKENNEY,  
JOHN SPALDING FLANNERY,  
*Attorneys for Defendant in Error.***



**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1905.**

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**No. 201.**

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**FEDERICO AMADEO, FOR THE USE OF AND JOINTLY  
WITH THE PASTOR MARQUEZ COMPANY, IN LIQUIDATION,  
PLAINTIFFS IN ERROR,**

**vs.**

**THE ROYAL INSURANCE COMPANY.**

---

**IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF PORTO RICO.**

---

**BRIEF FOR DEFENDANT IN ERROR.**

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**STATEMENT OF CASE.**

The pleadings and course of procedure in this case are similar to those found and pursued in cases Nos. 199 and 200.

The judgment was in favor of the defendant upon the pleadings and against "Federico Amadeo for himself and for the use and benefit of the firm of Pastor Marquez and Company and Pedro Salazar, as liquidating partner of the said Pastor Marquez and Company" (R., 29).

Judgment was rendered January 15, 1904.

Neither Federico Amadeo nor Pedro Salazar, as liquidating partner of Pastor Marquez and Company, join in the alleged appeal bond, which does not appear to have been approved by the district judge (R., 31), nor does the name of Pedro Salazar appear as a party plaintiff in error in either the citation (R., 33-34) or the writ of error (R., 35).

No summons and severance or notification of intention on the part of Federico Amadeo to sue out the writ of error appears to have been had or given to Salazar.

### **ARGUMENT.**

For reasons suggested and upon the authorities cited in the brief of defendant in error, filed in cases 199 and 200, this writ of error herein should be dismissed.

FRANCIS H. DEXTER,  
FREDERIC D. MCKENNEY,  
JOHN SPALDING FLANNERY,  
*Attorneys for Defendant in Error.*







# Supreme Court of the United States.

Nos. 199, 200 and 201.—OCTOBER TERM, 1905.

Antonio José Amadeo, for the use of and  
together with the Pastor Marquez Com-  
pany, in Liquidation, Plaintiffs in Error,  
199 *vs.*

The Northern Assurance Company.

Antonio José Amadeo, for the use of and  
together with the Pastor Marquez Com-  
pany, in Liquidation, Plaintiffs in Error,  
200 *vs.*

The Royal Insurance Company.

Federico Amadeo, for the use of and jointly  
with the Pastor Marquez Company, in  
Liquidation, Plaintiffs in Error,  
201 *vs.*

The Royal Insurance Company.

In error to the District Court  
of the United States for the  
District of Porto Rico.

[April 2, 1906.]

Mr. Chief Justice FULLER delivered the opinion of the Court :

In No. 199 the action was commenced April 21, 1903, by Antonio José Amadeo as sole plaintiff to recover from the Northern Assurance Company damages in the sum of \$10,000 on a certain fire insurance policy issued on property in Porto Rico. The policy was dated December 21, 1884, and insured plaintiff against loss by fire for one year from that date. The loss was alleged to have occurred February 7, 1885.

Defendant filed several pleas, and, among others, that "the alleged cause of action did not accrue within fifteen years before this suit," and that prior to the institution of the suit the policy and its proceeds had been duly sold and transferred by plaintiff "to the firm of Pastor Marquez and Company, who are the only persons entitled to sue herein."

Plaintiff demurred to both these pleas, but subsequently, by leave of court, amended his declaration by adding to the caption, after the name Amadeo, the words "for the use of and together with Pastor Marquez Company, in liquidation," and by inserting in the body of the declaration the following: "And plaintiff avers that about the month of August, 1885, the said policy was assigned to the Pastor Marquez Company, which is a company in liquidation and of which Pedro Salazar is liquidator."

Thereafter plaintiff's demurrer to defendant's pleas of prescription was overruled by the court, and plaintiff excepted, and subsequently replied that the prescription pleaded had been interrupted "extrajudicially." To that replication defendant interposed a demurrer, which was sustained by the court. Plaintiffs thereupon declined to plead further and the court entered judgment, January 12, 1904, as follows: "And it is therefore adjudged by the court that issue is found in favor of the defendant and that the plaintiffs recover nothing herein, and that the defendant go hence with judgment for cost against the plaintiffs." It now appears that plaintiff Amadeo died intestate May 14, 1904. September 20, 1904, application was made for the allowance of a writ of error from this court to review the judgment, which was allowed September 21, 1904. On December 20, 1904, an appeal bond in the sum of \$500, wherein Pastor Marquez and Company was named as principal and Lucas Amadeo and Felix Salazar as sureties, was filed in the clerk's office of the District Court, but the bond did not bear the approval of the judge. The bond was entitled "Antonio José Amadeo and Pastor Marquez and Co. vs. Northern Assurance Co.;" recited that "whereas the above-named plaintiffs have sued out a writ of error to the Supreme Court," etc., and was conditioned that "the above-named plaintiffs shall prosecute said writ to effect," etc. It was signed "Pastor Marquez & Com. en Liquid. E. Salazar, Lucas Amadeo, Felipe Salazar." The writ of error, which is dated December 31, 1904, bears the allowance of the District Judge, who also signed the citation under that date. The writ of error and the citation describe "Antonio José Amadeo for the use of and together with the Pastor Marquez Company in liquidation" as plaintiffs in error. The writ of error asserts that the error complained of wrought damage to "said Antonio José Amadeo for the use of and together with the Pastor Marquez Company in liquidation." The transcript of record was docketed in this court March 15, 1905.

In No. 200, the action was brought by Antonio José Amadeo alone, upon two policies of insurance against the Royal Insurance Company, April 21, 1903. The policies of insurance were dated September 15 and December 21, 1884, respectively, and insured plaintiff against loss and damage for one year from their respective dates. The loss as alleged occurred February 7, 1885. Defendant, among other defenses, pleaded prescription of fifteen years and transfer by plaintiff, prior to the institution of the suit, of the policies and all interest therein. To these pleas plaintiff at first demurred, but subsequently with leave of the court amended his declaration as follows: In the title, after the name of the plaintiff, by adding the following words, "for the use of and together with the Pastor Marquez Company in liquidation," and by adding in the body of the declaration the following: "And plaintiff avers that on or about August, 1885, the said policy was assigned to the Pastor Marquez Company, which is a com-

pany in liquidation and of which Pedro Salazar is liquidator." Plaintiff's demurrer to defendant's pleas of prescription having been overruled and exception thereto noted, plaintiff replied that the prescription had been interrupted "by extrajudicial demand;" to which replication defendant interposed a demurrer, which was sustained. And plaintiff having refused to plead further to defendant's pleas of prescription and "failing to offer proofs as to the other issues made and tendered," judgment was on the 15th day of January, 1904, entered for defendant as follows: "That the plaintiffs herein, Antonio José Amadeo, for himself and for the use and benefit of the firm of Pastor Marquez and Company, and Pedro Salazar as liquidating partner of the said Pastor Marquez and Company, take nothing by either of their said suits, and that the defendants go hence without day and recover of and from the said plaintiffs all costs in this behalf incurred or expended, for which execution may issue." Petition for allowance of writ of error was filed September 20, 1904, and allowed the next day. An appeal bond entitled "José Antonio Amadeo and Pastor Marquez and Company vs. Royal Insurance Co." was "filed and approved Dec. 20th, 1904," but the copy of the bond in the transcript of record does not show the approval of the District Judge. This bond was signed by "Pastor Marquez & Co. en liqui., E. Salazar, Felipe Salazar, Lucas Amadeo," Pastor Marquez & Co. being described as principal and Lucas Amadeo and Felipe Salazar as sureties. The writ of error and citation were as in case No. 199. Record filed March 15, 1905.

No. 201 was a consolidation of two similar actions, and the course of procedure was like that in Nos. 199 and 200. The judgment was rendered January 15, 1904, in favor of defendant and against "Frederico Amadeo, for himself and for the use and benefit of the firm of Pastor Marquez and Company, and Pedro Salazar as liquidating partner of the said Pastor Marquez & Company."

The appeal bond was filed December 20, 1904, and was signed by "Pastor Marquez and Co., in liquidation, E. Salazar, Felipe Salazar and Lucas Amadeo;" and did not bear the approval of the District Judge. The record was filed March 15, 1905.

The sureties on each of the appeal bonds in Nos. 199, 200 and 201 made affidavit as to their responsibility before the clerk of the District Court, and acknowledged the execution of the bonds before him.

It was admitted at the bar that on the merits these judgments must be reversed. *Royal Insurance Company v. Miller*, 199 U. S. 353.

But it is insisted that the writs of error in Nos. 199 and 200 should be dismissed because Antonio José Amadeo died after judgment and before the writs of error were sued out, and the Pastor Marquez Company, if otherwise competent, could not prosecute the writs until after notice to the succession of the deceased. And further, that as it appeared that Pastor

Marquez Company was in liquidation, the writs of error as well as the actions could only be prosecuted in the name of the liquidator, which was denied to be the fact here. And that the writ of error in No. 201 should be dismissed on the latter ground as well as because of want of summons and severance.

Antonio José Amadeo was dead when the writs of error issued in Nos. 199 and 200, and it is contended that the writs cannot be maintained because the actions had not been revived below, the death was not suggested on the record, and no notice of intention to take out the writs was given to his succession. Defendant, however, pleaded, among other defenses, that Amadeo had no interest in the cause of action, because the policies and their proceeds had been duly sold and transferred to Pastor Marquez and Company, who were alone entitled to sue. And thereafter the complaints were amended, as previously stated. For the purposes of these motions to dismiss, defendant in error cannot be permitted in this court to assert that Amadeo was other than a nominal plaintiff, and the cases fall within the principle, occasionally applicable, that parties having no legal interest in maintaining or reversing a judgment or decree are not necessary parties to a writ of error or appeal. *Basket v. Hassell*, 107 U. S. 602; *Germain v. Mason*, 12 Wall. 259; *Forgay v. Conrad*, 6 How. 201.

And although these records are much confused and very carelessly made up, we think that it may be properly held that the effect of the amendments was to bring the liquidator into court with the liquidating company, and, at all events, that, in view of defendants' pleas, the amendments thereupon, and the want of objection below in respect of the liquidator, that objection should not now be entertained in defeat of our jurisdiction. These considerations control the disposition of No. 201.

As to the suggested irregularities in the appeal bonds, they do not render the writs of error void, and we do not feel called on to enter any orders in regard to them, as these cases must go back for further proceedings.

*Judgments reversed and causes remanded for further proceedings in conformity with law.*

True copy.

Test :

*Clerk Supreme Court, U. S.*